

**Service of Process****Transmittal**

01/19/2017

CT Log Number 530522790

**TO:** Jennifer Lauro  
The Hanover Insurance Group  
N-430, 440 Lincoln St  
Worcester, MA 01653-0002

**RE:** **Process Served in Texas**

**FOR:** The Hanover Insurance Company (Domestic State: NH)

**ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:**

**TITLE OF ACTION:** PAT DAVIS, INC., Pltf. vs. HANOVER INSURANCE GROUP, Dft.  
*Name discrepancy noted.*

**DOCUMENT(S) SERVED:** Citation, Original Petition(s), Attachment(s)

**COURT/AGENCY:** 251st Judicial District Court of Randall County, TX  
Case # 71259C

**NATURE OF ACTION:** Insurance Litigation

**ON WHOM PROCESS WAS SERVED:** C T Corporation System, Dallas, TX

**DATE AND HOUR OF SERVICE:** By Certified Mail on 01/19/2017 postmarked on 01/17/2017

**JURISDICTION SERVED :** Texas

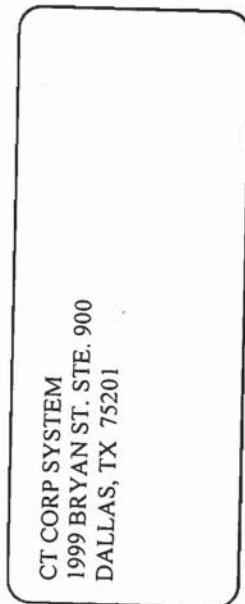
**APPEARANCE OR ANSWER DUE:** By 10:00 a.m., on the Monday next following the expiration of 20 days after service

**ATTORNEY(S) / SENDER(S):** Steven L. Hoard  
MULLIN HOARD & BROWN, L.L.P.  
500 South Taylor, Suite 800  
Amarillo, TX 79120-1656  
(806) 372-5050

**ACTION ITEMS:** CT has retained the current log, Retain Date: 01/19/2017, Expected Purge Date: 01/24/2017  
  
Image SOP  
  
Email Notification, Service of Process ogclitmail@hanover.com

**SIGNED:**  
**ADDRESS:** C T Corporation System  
1999 Bryan Street  
Suite 900  
Dallas, TX 75201

**TELEPHONE:** 214-932-3601



JO CARTER, DISTRICT CLERK  
RANDALL COUNTY  
2309 RUSSELL LONG BLVD, STE 110  
CANYON TX 79015

CT CORP SYSTEM  
1999 BRYAN ST. STE. 900  
DALLAS, TX 75201

TUE 17 JAN 2017

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# THE STATE OF TEXAS

**TO: HANOVER INSURANCE GROUP, BY SERVING ITS REGISTERED AGENT, CT CORP SYSTEM, 1999 BRYAN, ST., STE. 900, DALLAS, TX 75201**, Defendant in the hereinafter styled and numbered cause:

**YOU HAVE BEEN SUED.** You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 a.m., on the Monday next following the expiration of twenty (20) days after you were served this citation and petition, a default judgment may be taken against you.

**YOU ARE THEREFORE COMMANDED** to appear before the **251st District Court** of Randall County, Texas, to be held at the Justice Center, 2309 Russell Long Blvd, Canyon TX 79015 of said County, by filing such written answer to the petition of Plaintiff, a copy of which accompanies this citation in **Cause No. 71259C**, styled:

**PAT DAVIS, INC., Plaintiff**

**VS.**

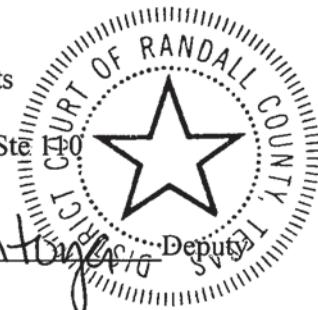
**HANOVER INSURANCE GROUP, Defendant**

filed in said Court on December 28, 2016.

**ISSUED AND GIVEN UNDER MY HAND AND SEAL OF SAID COURT** at office, on this the 16th day of January, 2017

**JO CARTER**  
Clerk of the District Courts  
Randall County, Texas  
2309 Russell Long Blvd. Ste 140  
Canyon, Texas 79015

By: Anny Montoya



The name and address of Plaintiff's attorney is: **STEVEN L. HOARD, PO BOX 31656, AMARILLO, TX 79120-1656, 806-372-5050**

## CLERK'S CERTIFICATE OF SERVICE

EXECUTED, on this the 16th day of January, 2017, by mailing a true copy of this citation, with true copy of the aforesaid pleading attached thereto, via certified mail, addressed to **CT CORP SYSTEM, 1999 BRYAN ST. STE. 900, DALLAS, TX 75201**, and endorsed thereon "Return Receipt Requested". Service upon the defendant is evidenced by the return receipt incorporated herein and attached hereto.

TO CERTIFY WHICH WITNESS my hand officially this on this the 16th day of January, 2017

**JO CARTER, District Clerk**  
Randall County, Texas

By: Anny Montoya



ATTACH RETURN  
RECEIPT HERE

 **COPY**

IN THE \_\_\_\_ DISTRICT COURT  
RANDALL COUNTY, TEXAS

**PAT DAVIS, INC.**

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*Plaintiff,*

v.

Cause No 71259C

**HANOVER INSURANCE GROUP**

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§  
§

*Defendant.*

**PLAINTIFF'S ORIGINAL PETITION FOR  
DECLARATORY JUDGMENT, EQUITABLE RELIEF & DAMAGES**

TO THE HONORABLE COURT:

COMES NOW, Pat Davis, Inc. ("Plaintiff") and files this Original Petition for Declaratory Judgment and damages against Hanover Insurance Group ("Hanover" or "Defendant").

**I.  
DISCOVERY PLAN**

1. Plaintiff intends to conduct discovery under a Level II Discovery Control Plan in accordance with Rule 190.3 of the Texas Rules of Civil Procedure.

**II.  
PARTIES**

2. Plaintiff, Pat Davis, Inc., is a corporation doing business in and organized under the laws of the State of Texas.

3. Defendant Hanover is a foreign corporation doing business in the State of Texas. Hanover may be served with process by delivery to its registered agent, CT Corp System, 1999 Bryan St. Ste. 900, Dallas, Texas 75201.

III.  
JURISDICTION AND VENUE

4. This Court has jurisdiction over defendant Hanover because it is licensed to do business and has availed itself of the privileges and benefits of conducting business in the State of Texas, including entering into contracts which are to be performed in the State of Texas. *See* TEX. CIV. PRAC. & REM. CODE § 17.042. This Court has jurisdiction over the controversy because the damages are within the jurisdictional limits of the Court.

5. Venue is proper in Randall County because Randall County is the county in which all or a substantial part of the events or omissions giving rise to the claim occurred. TEX. CIV. PRAC. & REM. CODE § 15.002.

IV.  
FACTS AND BACKGROUND

6. On or about March 22, 2016, Plaintiff entered into a Miscellaneous Professional Liability Policy with Defendant (the “Policy”). The Policy covers the period from March 26, 2016 to March 26, 2017. A true and correct copy of the Policy is attached hereto as Exhibit “A.”

7. On or about November 1, 2016, James Austin III (“Austin”—who is an investor in certain real estate investment entities that hired Plaintiff to manage their properties (the “Properties”)—filed suit against Plaintiff in Randall County alleging that Austin was damaged by Plaintiff’s negligent hiring and supervision of a bookkeeper who stole money from accounts owned by the Properties (the “Underlying Suit”). The Underlying Suit also alleged that Plaintiff breached his fiduciary duties to Austin by failing to ensure the accuracy of the Properties’ financial statements and by failing to oversee the bookkeeper.

8. By letter dated November 9, 2016, counsel for Plaintiff made formal demand upon Defendant that Defendant defend and indemnify Plaintiff from the Underlying Suit in

accordance with the terms of the Policy. Enclosed with that letter, Plaintiff also provided Defendant with the original petition filed in the Underlying Suit. A true and correct copy of the November 9, 2016 letter and enclosed petition is attached hereto as Exhibit "B."

9. By letter dated December 8, 2016, Defendant refused to defend and indemnify Plaintiff from the Underlying Suit, citing Exclusion 17 of the Policy, which excludes claims "arising out of or resulting, directly or indirectly from any actual or alleged commingling, misappropriation or improper use of funds or monies." A true and correct copy of the December 8, 2016, letter is attached hereto as Exhibit "C."

V.  
**CAUSES OF ACTION**

**A. Count 1—Suit for Declaratory Relief**

10. Paragraphs 1-9 are incorporated herein by reference.

11. As set forth above, Plaintiff is an insured under an insurance policy issued by Defendant for Plaintiff's benefit.

12. Austin filed the Underlying Suit asserting a liability claim against Plaintiff that, if true, would be covered by the Policy. The Underlying Suit asserts claims for negligence and breach of fiduciary duty, and all damages claimed by Austin arise from these allegations. The suit does not allege that Plaintiff commingled, misappropriated, or improperly used any funds or moneys, or that Plaintiff otherwise performed any intentional act. Pursuant to Section A.1. of the Policy, the Policy covers claims made against Plaintiff arising from a "wrongful act in the rendering or failure to render professional services" by Plaintiff. "Wrongful acts" are defined in Section D of the Policy as "any actual or alleged *negligent act*, error, omission, or misstatement committed in your professional services." (emphasis added). The claims asserted against Plaintiff in the Underlying Suit arise solely out of Plaintiff's alleged negligence in the hiring and

supervision of its bookkeeper and its alleged breach of fiduciary duty related to the hiring and supervision of its bookkeeper. There are no allegations that Plaintiff stole or misappropriated any monies. Therefore, Exclusion 17 of the Policy does not apply because the claims against Plaintiff do not arise directly or indirectly out of the misappropriation of monies. In the alternative, Plaintiff pleads that Exclusion 17 of the Policy is ambiguous and must be construed in favor of Plaintiff.

13. Plaintiff gave proper notice of the suit and a copy of the related petition to Defendant on November 9, 2016.

14. Defendant has not defended Plaintiff in the underlying suit as required by the terms of the Policy. Notwithstanding the fact that the Underlying Suit alleges only that Plaintiff was negligent and breached its fiduciary duties, Defendant has claimed that it is not obligated to defend or indemnify Plaintiff because Plaintiff's bookkeepers engaged in conduct not covered by the Policy, namely misappropriation or improper use of funds or monies. If the Underlying Suit includes one potentially covered claim, Defendant is obligated to pay for the entire defense, and the allegations in the Underlying Suit are to be liberally interpreted in favor of the insured.

*Zurich Am. Ins. v. Nokia, Inc.* 268 S.W.3d 487, 491 (Tex. 2008).

15. Attorney's Fees. Plaintiff is entitled to recover reasonable and necessary attorney fees under the Texas Declaratory Judgments Act.

#### **B. Count 2—Breach of Contract**

16. In addition to Plaintiff's claim for declaratory relief, Defendant breached its contract with Plaintiff. Paragraphs 1-15 are incorporated herein by reference.

17. The Policy, dated March 22, 2106, is a valid, enforceable written contract for professional liability insurance covering the period from March 26, 2106 to March 26, 2017. The Policy provided that Plaintiff would, as pertinent here, notify Defendant of claims against it. The

Policy provided that Defendant would, among other things, defend and indemnify Plaintiff from "any actual or alleged *negligent act*, error, omission, or misstatement committed in your professional services." (Policy, Sec. D). Plaintiff, as the insured under the Policy, is a proper party to sue for breach of contract.

18. Plaintiff has performed all of its contractual obligations under the Policy by paying all amounts required by the contract and by notifying Defendant of the Underlying Suit against Plaintiff.

19. Defendant has breached the contract by refusing to defend and indemnify Plaintiff from the Underlying Suit as required by the Policy. The Policy specifically covers claims for negligent acts committed in Plaintiff's provision of professional service, which is the basis of a cause of action alleged by the Underlying suit.

20. Defendant's breach has caused damages and continues to cause damages to Plaintiff, which has been forced to retain counsel to answer and otherwise defend itself from the underlying suit. Plaintiff continues to incur damages in defense of the Underlying Suit.

21. Attorney fees. Plaintiff is entitled to recover reasonable and necessary attorney fees under TEX. CIV. PRAC. & REM. CODE § 38.001 because this is a claim for breach of a written contract. Plaintiff has been required to retain counsel as a result of Defendant's breach.

VI.  
CONDITIONS PRECEDENT

22. All conditions precedent to Plaintiff's right to enforce the Policy have been performed or have occurred.

**VII.**  
**DAMAGES**

23. Plaintiff seeks monetary relief of over \$200,000 but not more than \$1,000,000, exclusive of attorneys' fees and costs.

**PRAYER**

WHEREFORE, Plaintiff prays that Defendant be cited to appear and answer, and that upon final hearing, Plaintiff have:

- a) A declaratory judgment obligating Defendant to honor its duty to defend Plaintiff by providing a full defense to Plaintiff and paying all future defense costs in the Underlying Suit and any amounts for which Plaintiff is found liable in the Underlying Suit;
- b) Damages for amounts expended by Plaintiff in defense of the Underlying Suit;
- c) Court costs;
- d) Attorneys' fees; and
- e) Such other and further relief, general or special, to which Plaintiff may show itself justly entitled at law or in equity.

December 28, 2016  
Amarillo, Texas

Respectfully submitted,

**MULLIN HOARD & BROWN, L.L.P.**  
Steven L. Hoard, TSB No. 09736600  
Johnathan H. Hinders, TSB No. 24092517  
500 South Taylor, Suite 800  
P.O. Box 31656  
Amarillo, Texas 79120-1656  
TEL: (806) 372-5050  
FAX: (806) 372-5086  
[shoard@mhba.com](mailto:shoard@mhba.com)  
[jhinders@mhba.com](mailto:jhinders@mhba.com)

/s/ Steven L. Hoard  
Attorneys for Pat Davis, Inc.

# Exhibit A

## Customer Notice of Privacy Policy and Producer Compensation Practices Disclosures

### Privacy Policy Disclosure

#### Collection of Information

We collect personal information so that we may offer quality products and services. This information may include, but is not limited to, name, address, Social Security number, and consumer reports from consumer reporting agencies in connection with your application for insurance or any renewal of insurance. For example, we may access driving records, insurance scores or health information. Our information sources will differ depending on your state and/or the product or service we are providing to you. This information may be collected directly from you and/or from affiliated companies, non-affiliated third parties, consumer reporting agencies, medical providers and third parties such as the Medical Information Bureau.

We, and the third parties we partner with, may track some of the web pages you visit through cookies, pixel tagging or other technologies. We currently do not process or comply with any web browser's "do not track" signals or similar mechanisms that request us to take steps to disable online tracking. For additional information regarding online privacy, please see our online privacy statement, located at [www.hanover.com](http://www.hanover.com).

#### Disclosure of Information

We may disclose non-public, personal information you provide, as required to conduct our business and as permitted or required by law. We may share information with our insurance company affiliates or with third parties that assist us in processing and servicing your account. We also may share your information with regulatory or law enforcement agencies, reinsurers and others, as permitted or required by law.

Our insurance companies may share information with their affiliates, but will not share information with non-affiliated third parties who would use the information to market products or services to you.

Our standards for disclosure apply to all of our current and former customers.

#### Safeguards to Protect Your Personal Information

We recognize the need to prevent unauthorized access to the information we collect, including information held in an electronic format on our computer systems. We maintain physical, electronic and procedural safeguards intended to protect the confidentiality and integrity of all non-public, personal information, including but not limited to social security numbers, driver's license numbers and other personally identifiable information.

#### Internal Access to Information

Access to personal, non-public information is limited to those people who need the information to provide our customers with products or services. These people are expected to protect this information from inappropriate access, disclosure and modification.

#### Consumer Reports

In some cases, we may obtain a consumer report in connection with an application for insurance. Depending on the type of policy, a consumer report may include information about you or your business, such as:

- character, general reputation, personal characteristics, mode of living;
- credit history, driving record (including records of any operators who will be insured under the policy); and/or
- an appraisal of your dwelling or place of business that may include photos and comments on its general condition.

#### Access to Information

Upon written request, we will inform you if we have ordered an investigative consumer report. You have the right to make a written request within a reasonable period for information concerning the nature and scope of the report and to be interviewed as part of its preparation. You may obtain a copy of the report from the reporting agency and, under certain circumstances, you may be entitled to a copy at no cost.

You also may review certain information we have about you or your business in our files. To review information we maintain in our files about you or your business, please write to us, providing your complete name, address and policy number(s), and indicating specifically what you would like to see. If you request actual copies of your file, there may be a nominal charge.

We will tell you to whom we have disclosed the information within the two years prior to your request. If there is not a record indicating that the information was provided to another party, we will tell you to whom such information is normally disclosed.

There is information that we cannot share with you. This may include information collected in order to evaluate a claim under an insurance policy, when the possibility of a lawsuit exists. It may also include medical information that we would have to forward to a licensed medical doctor of your choosing so that it may be properly explained.

#### **Correction of Information**

If after reviewing your file you believe information is incorrect, please write to the consumer reporting agency or to us, whichever is applicable, explaining your position. The information in question will be investigated. If appropriate, corrections will be made to your file and the parties to whom the incorrect information was disclosed, if any, will be notified. However, if the investigation substantiates the information in the file, you will be notified of the reasons why the file will not be changed. If you are not satisfied with the evaluation, you have the right to place a statement in the file explaining why you believe the information is incorrect. We also will send a copy of your statement to the parties, if any, to whom we previously disclosed the information and include it in any future disclosures.

#### **Our Commitment to Privacy**

In the insurance and financial services business, lasting relationships are built upon mutual respect and trust. With that in mind, we will periodically review and revise our privacy policy and procedures to ensure that we remain compliant with all state and federal requirements. If any provision of our privacy policy is found to be non-compliant, then that provision will be modified to reflect the appropriate state or federal requirement. If any modifications are made, all remaining provisions of this privacy policy will remain in effect. For more detailed information about our customer privacy policy (including any applicable state-specific policies) and our online privacy statement, visit our Web site, located at [www.hanover.com](http://www.hanover.com).

#### **Further Information**

If you have questions about our customer privacy policy (including any applicable state-specific policies) or our online privacy statement, or if you would like to request information we have on file, please write to us at our Privacy Office, N435, The Hanover Insurance Group, Inc., 440 Lincoln Street, Worcester, MA 01653. Please provide your complete name, address and policy number(s). A copy of our Producer Compensation Disclosure is also available upon written request addressed to the attention of the Corporate Secretary, N435, The Hanover Insurance Group, 440 Lincoln Street, Worcester, MA 01653.

#### **Producer Compensation Disclosure**

Our products are sold through independent agents and brokers, often referred to as "Producers." We may pay Producers a fixed commission for placing and renewing business with our company. We may also pay additional commission and other forms of compensation and incentives to Producers who place and maintain their business with us. Details of our Producer compensation practices may be found at [www.hanover.com](http://www.hanover.com).

This notice is being provided on behalf of the following Hanover Companies: The Hanover Insurance Group, Inc. - Allmerica Financial Alliance Insurance Company - Allmerica Financial Benefit Insurance Company - Allmerica Plus Insurance Agency, Inc. - Citizens Insurance Company of America - Citizens Insurance Company of Illinois - Citizens Insurance Company of the Midwest - Citizens Insurance Company of Ohio - Citizens Management, Inc. - AIX Ins. Services of California, Inc. - Campania Insurance Agency Co. Inc. - Campmed Casualty & Indemnity Co. Inc. - Chaucer Syndicates Limited - Educators Insurance Agency, Inc. - Hanover Specialty Insurance Brokers, Inc. - The Hanover American Insurance Company - The Hanover Insurance Company - The Hanover New Jersey Insurance Company - The Hanover National Insurance Company - Hanover Lloyd's Insurance Company - Massachusetts Bay Insurance Company - Opus Investment Management, Inc. - Professionals Direct Insurance Services, Inc. - Professional Underwriters Agency, Inc. - Verlan Fire Insurance Company - Nova Casualty Company - AIX Specialty Insurance Company.



*Hanover Professionals  
Advantage Portfolio*

**DECLARATIONS**

**THIS IS A CLAIMS-MADE POLICY. PLEASE READ THE POLICY CAREFULLY.**

**MISCELLANEOUS PROFESSIONAL LIABILITY POLICY**

Policy Number	Coverage is provided by:	Agency	Agency Code
LHD A256124 02	HANOVER INSURANCE COMPANY 440 LINCOLN STREET WORCESTER, MA 01653	AMWINS BROKERAGE OF	1602298

Issue Date: 03/22/2016

**Item 1. Named Insured and Address:**

PAT DAVIS INC  
PO Box 51620  
AMARILLO, TX 79159

**Item 2. Policy Period:**

Inception Date: 03/26/2016  
Expiration Date: 03/26/2017  
12:01 A.M. Standard Time at the address  
of the Named Insured as stated herein

**Item 3. LIMIT OF LIABILITY**

Limit of Liability

- a. \$1,000,000 for each Claim; not to exceed
- b. \$1,000,000 for all Claims in the aggregate

**Item 4. DEDUCTIBLE:**

\$5,000 Each Claim

**Item 5. RETROACTIVE DATE:** 03/26/2009

**Item 6. PROFESSIONAL SERVICES**

Property Manager, Leasing Agent and/or Real Estate Agent/Broker

**Item 7. PREMIUM FOR THE POLICY PERIOD:**

Total Coverage Premium: \$3,235.00  
State Surcharge and Tax: (if applicable)  
State Guaranty Fund: \$0.00 (if applicable)  
Total Premium: \$3,235.00

**Item 8. NOTICE OF A CLAIM**

Report any claim to the Company as required by Section G. DUTIES IN THE EVENT OF CLAIM(S) OR  
POTENTIAL CLAIM(S):

The Hanover Insurance Company  
P.O. Box 15145  
Worcester, MA 01615

National Claims Telephone Number: 800-628-0250  
Facsimile: 800-399-4734  
Email: [firstreport@hanover.com](mailto:firstreport@hanover.com)

**Item 9. Forms attached at issue:**

401-1268	(08-12)	U.S. Treasury Department's Office of Foreign Assets Control ("OFAC") Advisory Notice to Policyholders
910-0001	(12-09)	Miscellaneous Professional Liability Insurance Policy

910-0018	(03-10)	Consent to Settle Amendment Endorsement
910-0079	(01-12)	Property Management Endorsement
910-0106	(04-15)	Texas Miscellaneous Professional Liability Amendatory Endorsement
910-0140	(10-11)	Notice to Policyholders: Information Regarding Extended Reporting Period ("ERP Coverage")
910-0170	(01-12)	Environmental Hazards Endorsement
910-0243	(06-15)	Texas Policyholder Notice
910-0716	(01-15)	Real Estate Professional Services Endorsement
SIG-1100	(08-14)	Signature Page

**Item 10. Producer Name and Address:** AMWINS BROKERAGE OF  
5910 N CENTRAL EXPRESSWAY DALLAS TX 75206



**U.S. TREASURY DEPARTMENT'S  
OFFICE OF FOREIGN ASSETS CONTROL ("OFAC")**

**ADVISORY NOTICE TO POLICYHOLDERS**

No coverage is provided by this policyholder notice nor can it be construed to replace any provisions of your policy. You should read your policy and review your Declarations page for complete information on the coverages you are provided.

This notice provides information concerning possible impact on your insurance coverage due to directives issued by OFAC. **Please read this notice carefully.**

The Office of Foreign Assets Control ("OFAC") administers and enforces sanctions policy, based on Presidential Declarations of National Emergency.

OFAC has identified and listed numerous foreign agents, front organizations, terrorists, terrorists organizations, and narcotic traffickers as "Specially Designated Nationals and Blocked Persons". This list can be located on the United States Treasury's web site: <http://www.treas.gov/ofac>.

In accordance with OFAC regulations, if it is determined that you or any other insured, or any person or entity claiming the benefits of this insurance has violated United States sanctions law or is a Specially Designated National and Blocked Person, as identified by OFAC, this insurance will be considered a blocked or frozen contract and all provisions of this insurance are immediately subject to OFAC. When an insurance policy is considered to be such a blocked or frozen contract, no payments nor premium refunds may be made without authorization from OFAC.

Other limitations on the premiums and payments also apply.

MISCELLANEOUS PROFESSIONAL LIABILITY INSURANCE POLICY

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## MISCELLANEOUS PROFESSIONAL LIABILITY INSURANCE POLICY

This is a CLAIMS-MADE AND REPORTED policy. Subject to the terms, conditions, exclusions and limitations of this policy, coverage is limited to liability for only those claims that are first made against you and reported to us in writing after the retroactive date and during the policy period or any optional extended reporting period, if exercised by you.

This is a "defense within limits" policy with claim expenses included within the limit of liability. The limit of liability available to pay damages will be reduced by amounts we pay for claim expenses as defined in the policy. Further note that amounts incurred for claim expenses and damages are subject to the deductible.

Please read this policy carefully.

Throughout this policy, the terms **we**, **us** and **our** refer to the Company providing this insurance. The terms **you** and **your** refer to the persons and entities insured under this policy. Other terms in bold print have special meaning and are defined in the policy.

### A. COVERAGE – WHAT THIS POLICY INSURES

#### 1. Professional Services Coverage

We will pay on **your** behalf those sums which **you** become legally obligated to pay as **damages** and **claim expenses** because of any **claim** made against **you** arising from a **wrongful act** in the rendering or failure to render **professional services** by **you**.

The following additional requirements and limitations shall apply to coverage provided under A.1 above and A.3. and A.4. below:

- a. The **wrongful act** must have first occurred on or after the applicable **retroactive date(s)**;
- b. **You** had no knowledge of facts which could have reasonably caused **you** to foresee a **claim**, or any knowledge of the **claim**, prior to the effective date of this **policy**; and,
- c. The **claim** must first be made and reported to **us** in writing during the **policy period** or any **extended reporting period**, if applicable, and must arise from any **wrongful act** to which this **policy** applies.

#### 2. Disciplinary Proceedings Coverage

We will pay on **your** behalf only **defense expenses** incurred in responding to a **disciplinary proceeding** commenced against **you** and reported to **us** in writing during the **policy period**, or which was commenced during the **policy period** and, if exercised, reported to **us** in writing during any optional **extended reporting period**. The maximum amount available for **defense expenses** for a **disciplinary proceeding** is \$25,000 for each **policy period**, regardless of the number of **disciplinary proceedings**. Any payment made hereunder shall not be subject to the deductible and shall not reduce any applicable limit of liability. Inclusive within this coverage, we will pay up to \$250 per day for any salaries and expenses of **your** employees required to attend or participate in any **disciplinary proceeding**. We shall not pay any damages incurred as a result of **disciplinary proceedings**.

#### 3. Personal Injury Coverage

We will pay on **your** behalf those sums which **you** become legally obligated to pay as **damages** and **claim expenses** because of any **claim** made against **you** and reported to **us** in writing during the **policy period**, or any **extended reporting period**, if applicable, that arise from **your professional services** and are for:

- a. **Your** defamation, libel, slander, product disparagement, trade libel, infliction of emotional distress or other tort related to disparagement or harm to the reputation or character of any person or entity;
- b. **Your** invasion or interference with the right to privacy or publicity, including but not limited to false light, public disclosure of private facts, intrusion and invasion; or
- c. **Your** causing a third party to be subject to false arrest, detention or imprisonment.

#### 4. Technology Professional Coverage

We will pay on **your** behalf those sums which **you** become legally obligated to pay as **damages** and **claim expenses** because of any **claim** arising from **your professional services** and made against any **insured** and reported to **us** in writing during the **policy period**, or any **extended reporting period**, if applicable, that arises from:

- a. The inability of an authorized third party to gain access to **computer services**;
- b. **Unauthorized access to computer services** that results in:
  - 1) The destruction, deletion or corruption of electronic data on **computer services**; or
  - 2) Denial of service attacks against **computer services** or transmission of **malicious code** to **computer services**.

**B. DEFENSE AND SETTLEMENT (INCLUDED IN THE LIMIT OF LIABILITY)**

We have the right to investigate and the exclusive right to defend any claim made under this policy, even if the allegations are groundless, false or fraudulent until there is a final adjudication against you. We are not obligated to defend any criminal investigation, criminal proceeding or prosecution against you. If a claim is not covered under this policy, we will have no duty to defend it.

Payment of **claim expenses** will reduce the amounts available to pay **damages**. Our duty to defend any claim or pay any amount as **damages** or **claim expenses** will cease when our limit of liability has been exhausted. Upon exhaustion of the limits of liability, we will tender control of the defense to the named insured. The named insured agrees to accept this tender of defense.

We will not settle a **claim** without the consent of the named insured. If the named insured refuses to consent to a settlement we recommend and which a claimant would accept, then our liability for the **claim** will not exceed the amount for which we would have been liable for **damages** if the **claim** had been settled as recommended by us and acceptable to the claimant, including **claim expenses** incurred up to the date of the named insured's refusal. After the time of the named insured's refusal, the named insured shall be responsible for all **damages** in excess of the amount for which the **claim** could have been settled, and all **claims expenses** incurred thereafter. For the purpose of this section, settlement includes, but is not limited to, any resolution of a **claim** that would have occurred as a result of any court-ordered process which the named insured chose not to accept.

The named insured is responsible for any fees or costs charged by a lawyer defending you or any other defense expenses incurred without our written consent.

**C. LIMIT OF LIABILITY AND DEDUCTIBLE**

**1. LIMIT OF LIABILITY**

The limit of liability per claim limit shown on Item 3.a of the Declarations page is the most we will pay for the sum of all **damages** and **claim expenses** arising out of a single **claim** or a series of related **claims**, regardless of the number of persons or entities insured under this policy, number of **claims** made or the number of persons or entities making **claims** during the **policy period** or during any **extended reporting period**, if any.

The Aggregate limit shown on Item 3.b of the Declarations page is the most we will pay for the sum of all **damages** and **claim expenses** for all **claims** under this policy.

**2. DEDUCTIBLE**

- a. You will pay the deductible amount shown in the Declarations. The deductible applies to each **claim**. We will not be required to make any payment for **claim expenses**, settlements reached, or judgments rendered in an otherwise covered **claim** unless and until you have paid the deductible in full. You must pay the deductible (i) immediately when invoiced or, (ii) in the event that offers of judgment or settlement demands are made which you and we agree should be accepted, prior to the expiration of the time period for responding to such offers or demands.
- b. All **claim expenses** will first be subtracted from the limit of liability, with the remainder, if any, being the amount available to pay for **damages** after you have paid the deductible in paragraph a.
- c. If you and we agree to use **mediation** to resolve any **claim** brought against you and if the **claim** is resolved by **mediation**, your deductible obligation for that **claim** will be reduced by 50%.

**3. REIMBURSEMENT**

In the event that we voluntarily choose or are compelled by a court of law to make any payment of the deductible and request reimbursement from you, the reimbursement is payable immediately, but no later than thirty (30) days after written demand.

**D. DEFINITIONS**

**Acts of Terrorism** means activities against persons, organizations or property of any nature:

- 1. That involve the following or preparation for the following:

- a) Use or threat of an act that interferes with or disrupts electronic, communication, information, or Use or threat of force or violence; or
- b) Commission or threat or a dangerous act; or
- c) Commission or threat of an act that interferes with or disrupts electronic, communication or mechanical systems; and

2. When one or both of the following apply:
  - a) The effect is to intimidate or coerce a government or the civilian population or any segment thereof, or to disrupt any segment of the economy; or
  - b) It appears that the intent is to intimidate or coerce a government, or to further political, ideological, religious, social or economic objectives or to express (or to express opposition to) a philosophy or ideology.

To qualify as an **act of terrorism**, the act must be determined by a governmental official or governmental authority to be an **act of terrorism** or **cyber terrorism** or that it was committed by a terrorist or **cyber terrorist**.

**Bodily Injury** means physical injury, sickness or disease and, if arising out of the foregoing, mental anguish, emotional distress, mental injury, shock, humiliation or death at any time.

**Claim** means a written demand or **suit** you receive.

**Claim expenses** means all expenses **we** incur or authorize in writing for the investigation, adjustment, defense or appeal of a **claim**. These expenses include fees charged by a lawyer, mediator or arbitrator with **our** consent for which **you** are obligated. **Claim expenses** also mean:

1. The premium on appeal, attachment or similar bond; and
2. Up to \$250 per day per insured for supplemental payment for reasonable expenses incurred for attendance at hearings, trials, or depositions at **our** request or with **our** consent by such **insured**. Such payment shall not exceed \$5,000 in the aggregate for all **insureds** in each **claim**.

**Claim expenses** do not include salaries, wages, fees, overhead or benefit expenses associated with:

3. Any **insured** except as specified in subparagraph 2. above; or
4. **Our** employees.

**Company** means the insurance company that issued this policy, as shown on the Declarations page or referred to herein as **we**, **us**, or **our**.

**Computer services** means computers and associated input and output devices, data storage devices, networking equipment, backup facilities, and internet sites operated by and either owned by or leased by any third party for whom **you** provide **professional services**.

**Damages** means monetary judgments, awards or settlements unless otherwise excluded. **Damages** includes (i) pre-judgment interest; and (ii) post judgment interest that accrues after entry of judgment and before **we** have paid, offered to pay or deposited in court that part of judgment within the applicable limit of liability.

**Damages** also means punitive or exemplary **damages** or the multiple portions thereof, if insurable under the applicable law of the jurisdiction most favorable to the insurability of such **damages** provided such jurisdiction is where:

1. **Those damages** were awarded or imposed; or
2. Any **wrongful act** occurred for which such **damages** were awarded or imposed;
3. The **named insured** resides, is incorporated or has its principal place of business; or
4. **We** are incorporated or have our principal place of business.

**Damages** do not include any costs or expenses in complying with any demand for or award of equitable relief, even if such compliance is compelled as a result of a judgment, award or settlement.

**Defense expenses** means all expenses **you** incur in investigation, defense or appeal of any **disciplinary proceeding**.

**Disciplinary proceeding** means any proceeding by a disciplinary official or agency to investigate or prosecute charges alleging professional misconduct in the performance of **your professional services**.

**Domestic partner** means any natural person granted legal status as a domestic partner under any applicable federal, state or local law or under the provisions of any formal program established by the **named insured**.

**Employment practices** means any actual or alleged:

1. Wrongful termination of the employment of, or demotion of, or failure or refusal to hire or promote any person in violation of law or in breach of any agreement to commence or continue employment;
2. Unlawful employment discrimination;
3. Sexual harassment of an employee or applicant for employment; or
4. Retaliatory treatment against an employee on account of that employee's exercise or attempted exercise of his or her rights under law.

**Equitable relief** means a remedy not involving the payment of monetary damages.

**Extended reporting period** means an additional period of time for reporting claim(s). The extended reporting period starts on the **policy termination date** and ends at the **extended reporting period expiration date**.

**First inception date** means the inception date of the first Miscellaneous Professional Liability policy issued by us to the **named insured** and continually renewed by us until the inception date of this current policy.

**Insured** means:

1. The **named insured**; and:
2. If you are a sole proprietorship, any past or present employee of **yours**, but only while acting on **your** behalf in their capacity as an employee;
3. If you are a partnership, any past or present general or managing partner, principal or employee of **yours**, but only while acting on **your** behalf in such capacity;
4. If you are a limited liability company, any past or present managing member, principal or employee of **yours**, but only while acting on **your** behalf in such capacity;
5. If you are a corporation, any past or present officer, director, trustee, or employee of **yours**, but only while acting on **your** behalf in such capacity;
6. Your temporary or leased employees, but only while acting on **your** behalf as an employee;
7. If you are a subsidiary of the **named insured**, you are only covered while acting on behalf of the **named insured**;
8. Your lawful spouse or **domestic partner**, solely for liability arising from any **wrongful act** of an insured committed without the participation of such spouse or **domestic partner**;
9. Your heirs, assigns and legal representatives in the event of your death, incapacity or bankruptcy to the extent that you would have been covered; or,
10. An independent contractor for **claims and damages under Section A.1, 3, or 4**, but only while acting on **your** behalf and only if there is a signed agreement executed by the **named insured** and the independent contractor which:
  - a) Specifies the services to be performed by the independent contractor on the **named insured's** behalf;
  - b) Provides that the services performed by the independent contractor will be under the **named insured's** supervision;
  - c) States that the independent contractor will be indemnified by the **named insured** for the services performed on the **named insured's** behalf; and,
  - d) Is entered into before the **wrongful act** which leads to a **claim or potential claim**.

**Loss** means **claim expenses**, **damages** and **defense expenses** and does not include **equitable relief**.

**Malicious code** means any virus, trojan horse, worm or similar software program, code or script intentionally designed to insert itself into computer memory.

**Mediation** means the non-binding intervention of a qualified neutral third party chosen by **you** and the other party to a **claim** with agreement by us.

**Named insured** means the individual, entity, partnership, or corporation designated as such in the Declarations page.

**Policy** means this **policy form**, the **Declarations**, and any endorsement to the **policy** issued by us, and **your application**, including all **supplements**.

**Policy period** means the period from the effective date of the policy to the expiration date or earlier termination date of the policy.

**Policy termination date** means the expiration date of the policy as shown on the Declarations page or the cancellation date of the policy, whichever is earlier.

**Pollutants** include, but are not limited to, any solid, liquid, gaseous, biological, radiological or thermal irritant or contaminant, including smoke, vapor, dust, fibers, mold, spores, fungi, germs, soot, fumes, asbestos, acids, alkalis, chemicals, and waste. **Waste** includes, but is not limited to, materials to be recycled, reconditioned or reclaimed and nuclear materials.

**Potential claim** means any wrongful act or any facts or other circumstances which may subsequently give rise to a claim.

**Professional services** means those services described in Item 6. of the Declarations which **you** perform for others for a fee.

**Property damage** means (1) physical injury to, loss or destruction of, tangible property including the resulting loss of use thereof; or (2) loss of use of tangible property which has not been physically injured or destroyed.

**Retroactive date(s)** refer to the dates shown in Item 5. of the Declarations. If no date is shown on the Declarations page the retroactive date will be inception date of the policy.

**Subsidiary** means any corporation:

1. Identified by **you** in the application for this policy, of which the **named insured** owns more than fifty percent (50%) of the issued and outstanding voting stock either directly or indirectly on the inception date of the policy period; or
2. Which becomes a **subsidiary** during the policy period provided that such corporation does not represent more than a ten percent (10%) increase in the total assets or gross revenue of the **named insured** as of the date of the acquisition. Where such corporation represents an increase in the total assets or gross revenue of the **named insured** of more than ten percent (10%), such corporation shall be deemed a **subsidiary** under the policy, but only upon the condition that within ninety (90) days of its becoming a **subsidiary**, **you** shall have provided **us** with full particulars of the new **subsidiary** and agree to any additional premium and/or amendment of the provisions of this policy required by **us** relating to such new **subsidiary**, subject to the review and acceptance by **us** of full and complete underwriting information. Further, coverage as shall be afforded to the new **subsidiary** is conditioned upon the **named insured** paying when due any additional premium required by **us** relating to such new **subsidiary**. A corporation becomes a **subsidiary** when the **named insured** owns more than fifty percent (50%) of the issued and outstanding voting stock either directly or indirectly, and ceases to be a **subsidiary** at such time when the **named insured** ceases to own more than fifty percent (50%) of the issued and outstanding voting stock.

**Suit** means a civil proceeding for monetary, non-monetary or injunctive relief, which is commenced by service of a complaint or similar pleading. **Suit** includes a binding arbitration proceeding in which **damages** are alleged and to which **you** must submit or do submit with our consent.

**Unauthorized access** means the use of or access to **computer systems** by a person not authorized to do so by the **Named Insured**; or the use or access to **computer systems** in a manner not authorized by the **named insured**.

**Wrongful act and wrongful acts** means any actual or alleged negligent act, error, omission, or misstatement committed in your professional services.

#### **E. EXCLUSIONS - WHAT THIS POLICY DOES NOT INSURE**

**This policy does not apply to claim(s)**

1. Cased upon, arising out of, or in any way relating directly or indirectly to any **insured**:
  - a) Committing any intentional, dishonest or fraudulent act or omission; or
  - b) Gaining any profit, remuneration or advantage to which such **insured** was not legally entitled, provided that this exclusion will not apply until a final adjudication establishes a) or b) above;
2. For any willful or criminal violation of any statute, rule or law;
3. For the return, restitution or reduction of professional fees or arising from any demand for equitable relief;
4. Arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of **pollutants** at any time;

5. Arising out of acts of terrorism;
6. Arising out of bodily injury or property damage;
7. Arising out of:
  - a) Any purchase, sale, or offer or solicitation of an offer to purchase or sell securities;
  - b) Any violation of any securities law, including the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, or any regulation promulgated under the foregoing statutes, or any federal, state or local laws similar to the foregoing statutes (including "Blue Sky" laws), whether such law is statutory, regulatory or common law; or
  - c) Any violation of the Organized Crime Control Act of 1970 (commonly known as Racketeer Influenced And Corrupt Organizations Act, or "RICO"), as amended, or any regulation promulgated thereunder or any federal, state or local law similar to the foregoing, whether such law is statutory, regulatory or common law;
8. Arising out of any breach of fiduciary duty, responsibility, or obligation in connection with any employee benefit or pension plan, including violations of the responsibilities, obligations or duties imposed upon fiduciaries by the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, or similar statutory or common law of the United States of America or any state or jurisdiction therein;
9. Arising out of any **employment practices** liability or any discrimination on any basis, including, but not limited to: race, creed, color, religion, ethnic background, national origin, age, handicap, disability, gender, sexual orientation or pregnancy;
10. Arising out of any misappropriation or misuse of trade secret or infringement of patent, copyright, trademark, trade dress or any other intellectual property right;
11. Arising out of false advertising, misrepresentation in advertising, antitrust, unfair competition, restraint of trade, unfair or deceptive business practices, including but not limited to, violations of any local, state or federal consumer protection laws;
12. Against **you** that are brought by or on behalf of any federal, state or local government agency or professional or trade licensing organizations; however, this exclusion shall not apply where the claim is alleging a **wrongful act in your rendering professional services** to such entity or for a disciplinary proceeding;
13. Arising out of liability **you** assume under any contract or agreement; however, this exclusion does not apply to liability **you** would have in the absence of such contract or agreement;
14. Against **you** that are brought by or on behalf of:
  - a) Any business entity that is owned, managed or operated, directly or indirectly, in whole or in part, by **you**;
  - b) Any parent company, subsidiary, successor or assignee of **yours**, or anyone affiliated with **you** or such business entity through common majority ownership or control; or
  - c) Any independent contractor supplying material or services to **you**;
15. Arising out of disputes involving:
  - a) **Your** fees or charges, including over-charges, or cost over-runs;
  - b) Collecting **your** fees from third parties;
  - c) The return of fees or other compensation paid to **you**; or
  - d) **Your** cost of correcting or re-performing or completing any **professional services**;
16. Arising out of **your** advising, requiring, obtaining or failing to advise, require or obtain any bond, suretyship or other form of insurance;
17. Arising out of or resulting, directly or indirectly, from any actual or alleged commingling, misappropriation or improper use of funds or monies; or
18. Arising out of a claim by any insured under this policy against any other insured under this policy.

**F. EXTENDED REPORTING PERIOD**

1. You will be entitled to an automatic extended reporting period for no additional premium. This extension is applicable to any claim made against **you** during the policy period and reported to **us** in writing, during the sixty (60) days immediately following the policy termination date.
2. We will provide an optional extended reporting period as described below:

- a) If this policy is canceled, terminated or nonrenewed, you shall have the right, upon payment of an additional premium, to an extension of the reporting period for any claim against you first made and reported after the date upon which the policy period ends, but only with respect to wrongful acts committed prior to the end of the policy period and otherwise covered by this policy. Such period shall be referred to as the optional extended reporting period.
  - 1) The available optional extended reporting periods and additional premium are determined in accordance with the rules, rates and rating plans we then have in effect in your state.
  - 2) You must request the optional extended reporting period in writing and must pay us the additional premium within 30 days following the date of such cancellation, termination or nonrenewal. If we do not receive your request and premium payment within 30 days following the date of such cancellation, termination or nonrenewal, your right to purchase the optional extended reporting period shall cease.
  - 3) If we cancel for non-payment of premium, you may purchase the optional extended reporting period only after any earned premium due us is paid within 10 days after the date of cancellation or policy expiration, whichever comes first.
- b) All premiums paid for an optional extended reporting period shall be deemed fully earned as of the first day of the optional extended reporting period. The optional extended reporting period may not be canceled.
- c) The optional extended reporting period shall not increase any limits of liability stated in Item 3. of the Declarations page. For the purpose of policy limits, the reporting periods are part of, not in addition to, the policy period.

#### G. DUTIES IN THE EVENT OF CLAIM(S) OR POTENTIAL CLAIM(S)

- 1. If you receive a claim, you and any other involved insured(s) must see to it that we receive written notice of the claim, with full details including the date received, as soon as practicable, but in no event later than 90 days after such claim is first made.
- 2. You and any other involved insured must:
  - a) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim;
  - b) Authorize us to obtain records and other information;
  - c) Cooperate with us in the investigation, defense or settlement of the claim; and
  - d) Assist us, upon our request, in the enforcement of any right against any person or entity which may be liable to you because of damages to which this insurance may apply.
- 3. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, agree to a settlement or incur any expense related to a claim without our consent.
- 4. If, during the policy period, you become aware of a wrongful act or any facts or other circumstance that occurred on or after the retroactive date but prior to the end of the policy period which may reasonably be expected to subsequently give rise to a claim against you, you must give us written notice as soon as practicable, but in any event not later than the end of the policy period or any extended reporting period, if applicable. To the extent possible notice should include:
  - a) Where the wrongful act took place and any facts or circumstance concerning the wrongful act; and
  - b) The names and addresses of any persons and entities involved.
- 5. Any claim arising out of the wrongful act, facts or circumstance which is subsequently made against you shall be deemed to have been first made at the time we received such written notice from you, if we receive proper notice of the potential claim according to paragraph 4. above.

The date of mailing shall constitute the date that such notice was given and proof of mailing shall be sufficient proof of notice.

#### H. CONDITIONS

##### 1. CANCELLATION AND NON RENEWAL

- a) We may not cancel this policy except for failure to pay premium when due, in which case we will give 10 days written notice to the named insured before such cancellation is effective.

- b) The named insured may cancel this policy for itself and all other insureds by written notice to us stating when thereafter the cancellation shall be effective. If this policy is cancelled, earned premium shall be computed in accordance with the customary short rate proportion of the premium.
- c) We are not required to renew this policy. However, written notice of our intent to nonrenew this policy shall be sent to the named insured at least 60 days prior to expiration of the policy period.

## 2. REPRESENTATIONS AND APPLICATION

By accepting this policy you agree that:

- a) The statements in the Declarations are accurate and complete;
- b) Those statements are based on representations you made in your application for this insurance policy;
- c) The representations made in your application are the basis of this policy and are to be considered as incorporated into and constituting a part of this policy;
- d) Those representations are material to the acceptance of the risk we assumed under this policy;
- e) We have issued this policy in reliance upon the truth, accuracy and completeness of such representations;
- f) The application shall be interpreted as a separate application for coverage by each insured. No statement in the application, fact pertaining to or knowledge possessed by any insured shall be imputed to any other insured for the purpose of determining if coverage is available; and
- g) Statements in the application, facts pertaining to or knowledge possessed by the individual signing the application shall be imputed to the named insured.

## 3. LEGAL ACTION AGAINST US

No person or entity has a right under this policy:

- a) To join us as a party or otherwise bring us into a suit asking for damages from an insured; or
- b) To sue us on this policy unless all of its terms have been fully complied with.

A person or entity may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this policy or that are in excess of the applicable limit of liability. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

## 4. CHANGE IN OWNERSHIP, CONTROL OR EXPOSURE

- a) If during the policy period:

- 1) Another person or entity or group of persons or entities acquires more than 50 percent of the assets of the named insured; or
- 2) Another person or entity, or group of persons or entities, acquires an amount of the outstanding securities representing more than 50 percent of the voting power for the election of the named insured's directors or trustees; or
- 3) The named insured consolidates with or merges with another entity,

you shall notify us of the change described in 1., 2., or 3. above, herein referred to as a transaction, as soon as practicable, but not later than 30 days after the effective date of the transaction and provide such additional information as we require.

- b) If a transaction occurs, coverage under this policy shall continue until termination of the policy period, but only with respect to claims and potential claims made for wrongful acts which took place prior to the transaction.
- c) If you fail to provide notice as described in 4.a. above, coverage provided to you under this policy shall terminate as of the date of the transaction.
- d) The entire premium for this policy shall be deemed fully earned upon the occurrence of a transaction.
- e) In the event of a transaction, the named insured will have the right, upon payment of an additional 75 percent of the premium, to an extension of coverage under the policy for claim(s) first made and reported during the 12 months after the transaction, but only with respect to any wrongful act

occurring prior to the transaction and otherwise covered by this policy. This 12-month period shall be referred to as the run-off period.

- 1) "The premium" means the premium in effect immediately prior to the transaction.
- 2) The rights contained in paragraph 4. shall terminate unless written notice of the election and the additional premium due are received by us within 60 days of the transaction.
- f) In the event of a transaction, the named insured has the right to purchase the run-off period, but has no right to purchase the optional extended reporting period described in SECTION F. of the policy.
- g) The additional premium for the run-off period shall be fully earned at the inception of the run-off period. The run-off period is not cancellable.
- h) The limit of liability for the run-off period is part of and not in addition to the limit of liability shown in Item 3. of the Declarations page.

#### 5. TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

If you have rights to recover all or part of any payment we have made under this policy, these rights are transferred to us. You must do nothing after a loss to impair our rights to seek or obtain recovery from others. At our request, you will sue those responsible or transfer those rights to us and help us enforce them. In the event of any payment under this policy, we shall be subrogated to the extent of such payment to all of your rights of recovery. You shall execute and deliver such instruments and papers and do whatever else is necessary to secure such rights and shall do nothing to prejudice or compromise such rights without our express written consent.

#### 6. ASSIGNMENT

No change in, modification of or assignment of interest in this policy shall be effective except when made by a written endorsement to the policy.

#### 7. SOLE AGENT FOR THE INSURED

By accepting this policy, you agree that only the named insured is authorized to act on behalf of all insureds with respect to the following: consenting to settlement or releasing rights under this policy, payment for premiums and deductibles, receiving return premiums, giving or receiving notice of cancellation or nonrenewal, requesting any optional extended reporting period or run-off period and agreeing to any changes in this insurance policy. Each insured agrees that the named insured shall act on its or their behalf with respect to such matters.

#### 8. COVERAGE TERRITORY AND VALUATION

- a) This policy applies to a wrongful act committed anywhere in the world, provided that the claim is made and suit is brought against the insured within the United States, its territories or possessions or Canada.
- b) All premiums, limits, deductibles, loss and other amounts are expressed and payable in the currency of the United States of America. If a judgment is rendered, a settlement is denominated or another element of loss under this policy is stated in a currency other than the United States of America dollars, payment under this policy shall be made in United States of America dollar equivalent determined by the rate of exchange published in the *Wall Street Journal* on the date the judgment becomes final, the amount of the settlement is agreed upon or any element of loss is due, respectively.

#### 9. OTHER INSURANCE

- a) If other valid and collectible insurance is available to you for loss covered under this policy, the insurance provided by this policy shall be excess over such other insurance, regardless of whether or not such insurance is primary, contributory, excess, contingent or otherwise.
- b) When this insurance is excess we have no duty to defend you against any claim if any other insurer has a duty to defend you against the claim. If no other insurer defends we will undertake to do so but we will be entitled to your rights against those other insurers.
- c) When this insurance is excess over other insurance we will pay only our share of the amount of loss, if any, that exceeds the sum of:
  - 1) The total amount that all such other insurance would pay for the loss in the absence of this insurance;

2) The total of all deductibles, self-insurance and retentions under all that other insurance.

We will share the remaining loss, if any, with any other insurance that is not described in this provision and was not bought specifically to apply in excess of the limit of liability shown in the Declarations page of this policy.

**d) Method of Sharing**

If all the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of liability or none of the loss remains, whichever comes first.

If any other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of liability to the total applicable limits of liability of all insurers.

**10. TWO OR MORE POLICIES, COVERAGE PARTS, OR ENDORSEMENTS ISSUED BY US**

It is our stated intention that this policy and any other policy, coverage part or endorsement issued by us, or by another member of the company, shall not provide duplication or overlap of coverage for the same claim. If this policy and any other policy issued by us, or by another member of the company, to you, apply to the same claim then, **Condition 9. Other Insurance** notwithstanding:

- a) We shall not be liable under this policy for a greater proportion of the loss than the applicable limit of liability of this policy bears to the sum of the total limits of liability of all such policies; and
- b) The maximum amount payable under all such policies combined shall not exceed the highest applicable limit of liability under any one policy.

**11. ALLOCATION**

If you incur both loss covered by this policy and loss not covered by this policy on account of any claim because such claim includes both covered and non-covered matters, coverage with respect to such claim shall apply as follows:

- a) 100 percent of defense expenses on account of the claim will be considered covered loss; and
- b) We shall fairly allocate all remaining loss that you incurred on account of such claim between covered loss and non-covered loss.

**12. SEPARATION OF INSUREDS**

Except with respect to the limits of liability, deductible and any rights or obligations assigned to the first named insured, this insurance applies:

- a) As if each insured were the only insured; and
- b) Separately to each insured against whom a claim is made.

**13. CONFORMANCE TO STATUTE**

The terms of this policy which are in conflict with the statutes of the state in which this policy is issued are amended to conform to those statutes.

**14. SECTION TITLES**

The titling of sections and paragraphs within this policy is for convenience only and shall not be interpreted as a term or condition of this policy.

**15. BANKRUPTCY**

You or your estate's bankruptcy or insolvency does not relieve us of our obligations under this policy.

**16. LIBERALIZATION**

If we adopt any revisions to the terms and conditions of this policy form to provide more coverage without an additional premium charge during the policy term, the broadened coverage will immediately apply. However, the broadened terms and conditions will not apply to any claims that were first made against you prior to the effective date of the revision.

## CONSENT TO SETTLE AMENDMENT ENDORSEMENT

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

Named Insured: PAT DAVIS INC

Policy Number: LHD A256124 02

Issued by The Hanover Insurance Company.

This endorsement, Effective 12:01 A.M. 03/26/2016 modifies the following:

**SECTION B. – DEFENSE AND SETTLEMENT (INCLUDED IN THE LIMIT)**, third Paragraph, is replaced with the following:

We will not settle a claim without the consent of the **named insured**. If the **named insured** refuses to consent to a settlement of any claim we recommend and which a claimant would accept, subject to the applicable limit of liability and deductible then **our** liability for the **claim** is limited to:

1. What we would have contributed to the settlement if **you** had consented to the settlement, including **claim expenses** incurred up to the date of such refusal; and
2. Seventy percent of such damages in excess of the amount for which the **claim** could have been settled.

After the time of the **named insured**'s refusal, the **named insured** shall be responsible for all **loss** in excess of the amount for which the **claim** could have been settled, the percentage of **damages** noted above in 2., and all **claims expenses**, incurred thereafter. For the purpose of this section, settlement includes but is not limited to any resolution of a claim that would have occurred as a result of any court-ordered process which the **named insured** chose not to accept.

All other terms and conditions remain unchanged.

## PROPERTY MANAGEMENT ENDORSEMENT

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

Named Insured: PAT DAVIS INC

Policy Number: LHD A256124 02

Issued by The Hanover Insurance Company.

This endorsement, Effective 12:01 A.M. 03/26/2016 modifies the following:

**A. SECTION A – COVERAGE – WHAT THIS POLICY INSURES**, Paragraph 3. is replaced by the following:

**3. Personal Injury Coverage**

We will pay on **your** behalf those sums which **you** become legally obligated to pay as **damages** and **claim expenses** because of any **claim** made against **you** and reported to **us** in writing during the **policy period**, or any **extended reporting period**, if applicable, that arise from **your professional services** and are for:

- a. **Your** defamation, libel, slander, product disparagement, trade libel, infliction of emotional distress or other tort related to disparagement or harm to the reputation or character of any person or entity;
- b. **Your** invasion or interference with the right to privacy or publicity, including but not limited false light, public disclosure of private facts, intrusion, and invasion; or
- c. **Your** causing a third party to be subject to wrongful eviction, false arrest, detention, or imprisonment.

**B. The following is added to SECTION E – EXCLUSIONS – WHAT THIS POLICY DOES NOT INSURE:**

This policy does not apply to claim(s):

Based upon, arising out of, or in any way relating to, directly or indirectly:

- a) Any promoting of, syndication of, offering or selling of any interest in any limited partnership;
- b) Any services as a property developer, builder, construction manager, loss control inspector, risk manager, safety inspector, insurance agent, insurance broker, mortgage banker, mortgage broker, escrow agent, real estate appraiser, title abstractor, and/or title agent;
- c) Any formation, growth, presence, release, dispersal, containment, removal, testing, for or detection or monitoring of, or failure to detect or monitor or warn about any molds, fungi, spores, or other similar growth or organic matter, including but not limited to Aspergillus, Pencillium or any strain or type of Stachybotrys, or toxic black molds;

**C. SECTION E – EXCLUSIONS**, Paragraphs 6. and 16. are replaced by the following:

**6. For any bodily injury or property damage**; however, this exclusion shall not apply to any claim arising out of a **wrongful act** committed by an insured in the rendering of **professional services** as specified in Item 6. of the Declarations;

**16. Any failure to effect or maintain, in the whole or part, any policy of insurance or reinsurance, any bond, or any decision or advise regarding the type or amount of insurance, reinsurance, or bond to purchase or perils to cover.**

This exclusion shall not apply in the event the **insured** uses and consults with a properly licensed insurance agent for the insurance needs on all properties the **insured** is responsible for procuring and maintaining insurance. It is further understood that this policy shall not apply to the intentional failure to effect or renew any insurance.

All other terms and conditions remain unchanged.

## TEXAS MISCELLANEOUS PROFESSIONAL LIABILITY AMENDATORY ENDORSEMENT

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

Issued by The Hanover Insurance Company.

This endorsement modifies the following:

**A. SECTION A – COVERAGE – WHAT THIS POLICY INSURES, Paragraph 2. Disciplinary Proceedings**  
Coverage is replaced by the following:

Disciplinary Proceedings Coverage

We will pay on your behalf only defense expenses incurred in responding to a disciplinary proceeding commenced against you and reported to us in writing during the policy period, or which was commenced during the policy period and, if exercised, reported to us in writing during any available extended reporting period. The maximum amount available for defense expenses for a disciplinary proceeding is \$25,000 for each policy period, regardless of the number of disciplinary proceedings. Any payment made hereunder shall not be subject to the deductible and shall not reduce any applicable Limit of Liability. Inclusive within this coverage, we will pay up to \$250 per day for any salaries and expenses of your employees required to attend or participate in any disciplinary proceeding. We shall not pay any damages incurred as a result of disciplinary proceedings.

**B. SECTION C – LIMIT OF LIABILITY AND DEDUCTIBLE** is amended to add the following

**4. ACTS OF TERRORISM:**

The most we will pay under this policy for both damages and claim expenses resulting from acts of terrorism is \$250,000 per occurrence, or an amount equal to the each claim limit shown in the Declarations, and \$250,000 aggregate, or an amount equal to the aggregate limit shown in the Declarations, whichever is less.

**C. Under SECTION D – DEFINITIONS, the definition of Acts of Terrorism is replaced by the following:**

Acts of Terrorism means activities against persons, organizations or property of any nature:

1. That involve the following, or preparation for the following:

- a) Use or threat of an act that interferes with or disrupts electronic, communication, information, or Use or threat of force or violence; or
- b) Commission or threat or a dangerous act; or
- c) Commission or threat of an act that interferes with or disrupts electronic, communication or mechanical systems; and

2. When one or both of the following apply:

- a) The effect is to intimidate or coerce a government or the civilian population or any segment thereof, or to disrupt any segment of the economy; or
- b) It appears that the intent is to intimidate or coerce a government, or to further political, ideological, religious, social or economic objectives or to express (or to express opposition to) a philosophy or ideology.

**D. SECTION D – DEFINITIONS** is amended to add the following:

Certified Acts of Terrorism means any act that is certified by the Secretary in accordance with the provisions of the federal Terrorism Risk Insurance Act:

1. To be an act of terrorism;
2. To be a violent act or an act that is dangerous to:

- a) Human life;
- b) Property; or
- c) Infrastructure;

3. To have resulted in damage within the United States, or outside of the United States in the case of:

- a) An air carrier (as defined in section 40102 of title 49, United States Code), a United States flag vessel (or a vessel based principally in the United States, on which United States income tax is paid and whose insurance coverage is subject to regulation in the United States); or
- b) The premises of a United States mission; and

4. To have been committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

E. **SECTION E – EXCLUSIONS**, Paragraph 5. is replaced by the following:

5. Arising out of acts of terrorism if:
  - a) The acts of terrorism result in industry-wide insured losses that exceed \$25,000,000 for related incidents that occur within a 72 hour period; or
  - b) Fifty or more persons sustain death or serious physical injury.

However, this exclusion for acts of terrorism is not subject to the above limitations if:

  - c) The act of terrorism involves the use, release or escape of nuclear materials, or directly or indirectly results in nuclear reaction or radiation or radioactive contamination;
  - d) The act of terrorism is carried out by means of the dispersal or application of pathogenic or poisonous biological or chemical materials; or
  - e) Pathogenic or poisonous biological or chemical materials are released, and it appears that one purpose of the act of terrorism was to release such materials.

F. **SECTION F – EXTENDED REPORTING PERIOD**, Paragraph 2.a)1) is replaced by the following:

- 1) The available optional extended reporting periods and additional premium are determined in accordance with the rules, rates and rating plans we then have in effect in your state. The minimum length of the optional extended reporting period will be one year.

G. **SECTION H – CONDITIONS**, Paragraph 1.c) is replaced by the following:

- c) We are not required to renew this policy. However, written notice of our intent to nonrenew this policy shall be sent to the named insured at least 60 days prior to expiration of the policy period. If the notice is delivered or mailed later than the 60th day before the expiration date, the coverage will remain in effect until the 61st day after the date on which the notice is delivered or mailed. Earned premium for any period of coverage that extends beyond the expiration date of the policy will be computed pro rata based on the previous year's rate. The transfer of a policyholder between admitted companies within the same insurance group is not considered a refusal to renew.

H. The following is added to **SECTION H – CONDITIONS**, Paragraph 1. Cancellation and Non Renewal:

- d) Notices of cancellation or nonrenewal shall be sent by first class mail to the last address known to us, along with a statement of the specific reasons for cancellation or nonrenewal.
- e) We will not cancel or refuse to renew this policy based solely on the fact that the insured is an elected official.

I. **SECTION H – CONDITIONS**, Paragraph 2.d) of Representations and Application is replaced by the following:

- d) Any misrepresentations shall not be considered grounds for rescission of the policy or affect our obligations under this policy unless the insured knew or should have reasonably known that the representation was false and if it is shown at trial that:
  - 1) The misrepresentation was material to the risk; or
  - 2) The fact misrepresented contributed to the contingency or event on which the policy became due and payable.

J. **SECTION H – CONDITIONS**, Paragraphs 4.c) and d) of Change in Ownership, Control or Exposure are deleted.

K. **SECTION H – CONDITIONS**, Paragraph 10. Two or More Policies, Coverage Parts, or Endorsements Issued by Us is replaced by the following.

If two or more policies or coverage parts we issue apply to the same claim or claims, there shall not be any duplicate or overlapping coverage for the same claim by those policies or coverage parts. In that event, we will coordinate limits in proportion to the total limits available under the terms of the policies or coverage parts.

All other terms and conditions remain unchanged.



**NOTICE TO POLICYHOLDERS:  
MISCELLANEOUS PROFESSIONAL LIABILITY INSURANCE**

**INFORMATION REGARDING EXTENDED  
REPORTING PERIOD ENDORSEMENT  
("ERP COVERAGE")**

The enclosed policy provides coverage for claims reported during the policy period. Subject to the policy's terms and conditions, you may purchase an Extended Reporting Period Endorsement, also known as "ERP coverage", that will extend the time for reporting claims arising out of professional services rendered while the policy was still in effect, although the policy may have been cancelled, nonrenewed, or terminated. Please refer to Section F. of your policy for the terms and conditions for eligibility, purchasing or obtaining an Extended Reporting Period endorsement. There is a limited time for requesting such an endorsement.

The premium charged for the endorsement is expressed as a percentage of your policy's annual premium.

<b><i>Length of "ERP Coverage" Offered</i></b>	<b><i>"ERP Coverage" Premium</i></b>
12 months	100 % of expiring annual premium
24 months	150 % of expiring annual premium
36 months	200 % of expiring annual premium

*\*Extended Reporting Period Endorsements may be subject to state regulatory requirements.*

Please contact your agent or customer service representative for pricing specific to your situation and location.

## ENVIRONMENTAL HAZARDS ENDORSEMENT

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

Named Insured: PAT DAVIS INC  
Policy Number: LHD A256124 02

Issued by The Hanover Insurance Company.

This endorsement, Effective 12:01 A.M. 03/26/2016 modifies the following:

**SECTION E – EXCLUSIONS**, Paragraph 4. is replaced by the following:

4. Arising out of:

- a) The actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of **pollutants** at any time;
- b) Any directive, request or voluntary decision that any Insured monitor, clean up, remove, contain, treat, detoxify or neutralize pollutants; or
- c) Any governmental or regulatory directive to request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize pollutants; or
- d) The failure to discover, disclose, report or advise of the existence or amount of **pollutants**.

However, we will pay on **your behalf** **damages** and **claim expenses** incurred in the responding to a claim made against **you** and reported to us in writing during the **policy period**, or **extended reporting period**, if applicable, that arise from the failure to disclose, report, or advise of the existence of **pollutants**.

Notwithstanding anything to the contrary in the policy, including any endorsements thereto:

Our aggregate Limit of Liability for **damages** and **claim expenses** for all environmental hazard claims covered under this endorsement is \$1,000,000 (or the applicable aggregate Limit of Liability, set forth in Item 3. b. of the Declarations, whichever is less) which amount will be included within, and not in addition to, the aggregate Limit of Liability set forth in Item 3. b. of the Declarations.

All other terms and conditions remain unchanged.



## POLICYHOLDER NOTICE

### TEXAS IMPORTANT NOTICE

To obtain information or make a complaint:

You may call The Hanover Insurance Company's toll-free telephone number for information or to make a complaint:

**800-922-8427**

You may also write to The Hanover Insurance Company at:

The Hanover Insurance Company  
5910 North Central Expressway  
Suite 300  
Dallas, TX 75206

You may contact the Texas Department of Insurance to obtain information on companies, coverages, rights or complaints at:

**1-800-252-3439**

You may write to the Texas Department of Insurance at:

Texas Department of Insurance  
PO Box 149104  
Austin, TX 78714-9104  
Fax: (512) 490-1007

E-mail: [ConsumerProtection@tdi.texas.gov](mailto:ConsumerProtection@tdi.texas.gov)  
Web: [www.tdi.texas.gov](http://www.tdi.texas.gov)

#### PREMIUM OR CLAIM DISPUTES:

Should you have a dispute concerning your premium or about a claim, you should contact your agent or the company first. If the dispute is not resolved, you may contact the Texas Department of Insurance.

#### ATTACH THIS NOTICE TO YOUR POLICY:

This notice is for information only and does not become a part or condition of the attached document.

### TEXAS AVISO IMPORTANTE

Para obtener informacion o para someter una queja:

Usted puede llamar al numero de telefono gratis de The Hanover Insurance Company's para informacion o para someter una queja al:

**800-922-8427**

Usted tambien puede escribir a The Hanover Insurance Company:

The Hanover Insurance Company  
5910 North Central Expressway  
Suite 300  
Dallas, TX 75206

Puede comunicarse con el Departamento de Seguros de Texas para obtener informacion acerca de companias, coberturas, derechos o quejas al:

**1-800-252-3439**

Puede escribir al Departamento de Seguros de Texas:

Texas Department of Insurance  
PO Box 149104  
Austin, TX 78714-9104  
Fax: (512) 490-1007

E-mail: [ConsumerProtection@tdi.texas.gov](mailto:ConsumerProtection@tdi.texas.gov)  
Web: [www.tdi.texas.gov](http://www.tdi.texas.gov)

#### DISPUTAS SOBRE PRIMAS O RECLAMOS:

Si tiene una disputa concerniente a su prima o a un reclamo, debe comunicarse con el agente o la compania primero. Si no se resuelve la disputa, puede entonces comunicarse con el departamento (TDI).

#### UNA ESTE AVISO A SU POLIZA:

Este aviso es solo para propuesto de informacion y no se convierte en parte o condicion del documento adjunto.

## REAL ESTATE PROFESSIONAL SERVICES ENDORSEMENT

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

Named Insured: PAT DAVIS INC

Policy Number: LHD A256124 02

Issued by The Hanover Insurance Company.

This endorsement, Effective 12:01 A.M. 03/26/2016 modifies the following:

**A. SECTION A – COVERAGE**, Paragraph 3. is deleted and replaced by:

**3. Personal Injury Coverage**

We will pay on your behalf those sums which you become legally obligated to pay as damages and claim expenses because of any claim made against you and reported to us in writing during the policy period, or any extended reporting period, if applicable, that arise from your professional services and are for:

- a. Your defamation, libel, slander, product disparagement, trade libel, infliction of emotional distress or other tort related to disparagement or harm to the reputation or character of any person or entity;
- b. Your invasion or interference with the right to privacy or publicity, including but not limited to false light, public disclosure of private facts, intrusion, and invasion; or
- c. Your causing a third party to be subject to wrongful eviction, false arrest, detention or imprisonment.

**B. SECTION C – LIMIT OF LIABILITY AND DEDUCTIBLE**, Paragraph 2. is deleted and replaced by:

**2. DEDUCTIBLE**

a. You will pay the deductible amount shown in the Declarations. The deductible applies to each claim. We will not be required to make any payment for claim expenses, settlements reached, or judgments rendered in an otherwise covered claim unless and until you have paid the deductible in full. You must pay the deductible (i) immediately when invoiced or, (ii) in the event that offers of judgment or settlement demands are made which you and we agree should be accepted, prior to the expiration of the time period for responding to such offers or demands.

b. All claim expenses will first be subtracted from the limit of liability, with the remainder, if any, being the amount available to pay for damages after you have paid the deductible in paragraph a.

c. If you and we agree to use mediation and a claim is resolved by mediation prior to, or within 180 days of the claim, the institution of arbitration proceedings or service of suit, the deductible amount applying to such claim will be reduced by 50% or \$5,000, whichever is less;

d. The insured's obligation to pay the deductible amount stated in Item 4. of the Declarations shall be waived, in an amount not to exceed \$2,500, if the following conditions are met and evidence of such is provided to the company when notice of a claim is received by the company:

- 1) A seller disclosure form was signed by the seller and acknowledged by the buyer prior to closing, except in circumstances where the disclosure form is not applicable, such as the sale of estate and/or trust properties and new home construction;
- 2) A home warranty was purchased or waived in writing by the buyer prior to or at closing (for new homes the warranty provided by the builder is acceptable);
- 3) A written home inspection report is issued by a licensed or certified home inspector or waived in writing by the buyer prior to closing; and
- 4) A state or local board approved standard sales contract or a sales contract drafted by a licensed attorney was utilized.

**C. SECTION D – DEFINITIONS**, the definition of Professional services is deleted and replaced by:

Professional services means those services described in Item 6. of the Declarations page which you perform for others including advice given or services performed by an insured for others as a real estate agent, but solely when such services are performed on behalf of an insured as a real estate agency, and provided that the insured is appropriately licensed by the state in which the insured is doing business.

D. The following is added to **SECTION D – DEFINITIONS:**

**Guaranteed sale listing contract** means a written agreement between the **insured** and the seller of real property, in which the insured agrees to purchase such property if it is not sold under the listing agreement in the time frame specified by the agreement.

**Property manager** means any person or entity who manages real property, including leasing space, collecting rents, selecting tenants, and arranging for repair, renovation or maintenance by others of buildings or grounds, including services related to Real Estate Owned (REO) properties, foreclosures, or short sales.

**Real estate agency** means an entity doing business for compensation in the selling, leasing or marketing of commercial or residential real estate, including **property manager, short term escrow agent or notary public services.**

**Real estate agent** means an insured doing business as an agent, broker, referral agent, real estate consultant or counselor in the sale or leasing of commercial or residential real estate, including **short term escrow agent or notary public services.**

**Short term escrow agent** means an insured who, in connection with the sale or purchase of real property, receives or holds funds in, or distributes funds from, an escrow or trust account where all such funds are to be fully distributed within twelve (12) months from the date received.

E. The following is added to **SECTION E – EXCLUSIONS – WHAT THIS POLICY DOES NOT INSURE:**

This policy does not apply to **claim(s):**

Based upon or arising out of:

- a) Any conversion or improper use of funds or property;
- b) The insured's inability or refusal to pay or collect premium, or tax monies;
- c) Any promises, warranties, representations, or guarantees made by the **insured** as to the current and/or future value of any property;
- d) Any services as a property developer, builder, construction manager, loss control inspector, risk manager, safety inspector, insurance agent, insurance broker, mortgage banker, mortgage broker, real estate appraiser, title abstractor, and/or title agent;
- e) Any failure to effect or maintain, in the whole or in part, any policy of insurance or reinsurance, any bond, or any decision or advise regarding the type or amount of insurance, reinsurance, or bond to purchase or perils to cover. However this exclusion shall not apply in the event the **insured** uses and consults with a properly licensed and insured Insurance Agent for the insurance needs on all properties the insured is responsible for procuring and maintaining insurance. It is further understood that this policy shall not apply to the intentional failure to effect or renew any insurance;
- f) The formation, syndication, operations or administration of any property syndication, or real estate investment trust to any other form of corporation, general or limited partnership or joint venture formed for the purpose of investing in, selling or maintaining real property including those syndications, trusts, corporations, partnerships or joint ventures in which the **insured** has, had or intended to have a participating interest directly or indirectly in the profits or losses thereof;
- g) Any actual or attempted sale, purchase, leasing, appraisal, or property management of real property or raw land owned, developed, or constructed by:
  - 1) Any **insured**;
  - 2) Any entity in which the **insured** had a financial or a contemplated financial interest;
  - 3) Any entity with a financial interest or contemplated financial interest in the **named insured**; or
  - 4) Any entity under the same financial control as the **named insured**.

However, this exclusion does not apply to any **claim** based upon or arising out of:

- (a) Services as **property manager**, the purchase of real property, or the sale or purchase of raw land;
- (b) The actual or attempted sale or leasing of real property in which the combined ownership interest of all **insureds** was less than 20% at the time of the sale or lease;

- (c) The actual or attempted sale of residential real property, consisting of a 1-4 family dwelling, owned by the **insured** when all of the following conditions are met in connection with such sale:
  - (1) A seller disclosure form was signed by the **insured** and acknowledged in writing by the buyer prior to closing;
  - (2) A home warranty was purchased or waived in writing by the buyer prior to closing;
  - (3) A written home inspection report was issued by a licensed or certified home inspector, or was waived in writing by the buyer prior to closing; and
  - (4) A state or local board approved standard sales contract was utilized;
- (d) The actual or attempted sale of real property owned by the **insured** if the property was acquired by the **insured** under a **guaranteed sale listing contract**, and from acquisition to resale the title is held by the **insured** for twelve (12) months or less, and continually offered for sale by the **insured**;
- (e) The actual or attempted sale, leasing, or property management of the **insured's** residential real property by another **insured** who is not the owner of such residential property.

All other terms and conditions remain unchanged.

THE ONLY SIGNATURES APPLICABLE TO THIS POLICY ARE THOSE REPRESENTING THE COMPANY NAMED ON THE FIRST PAGE OF THE DECLARATIONS.

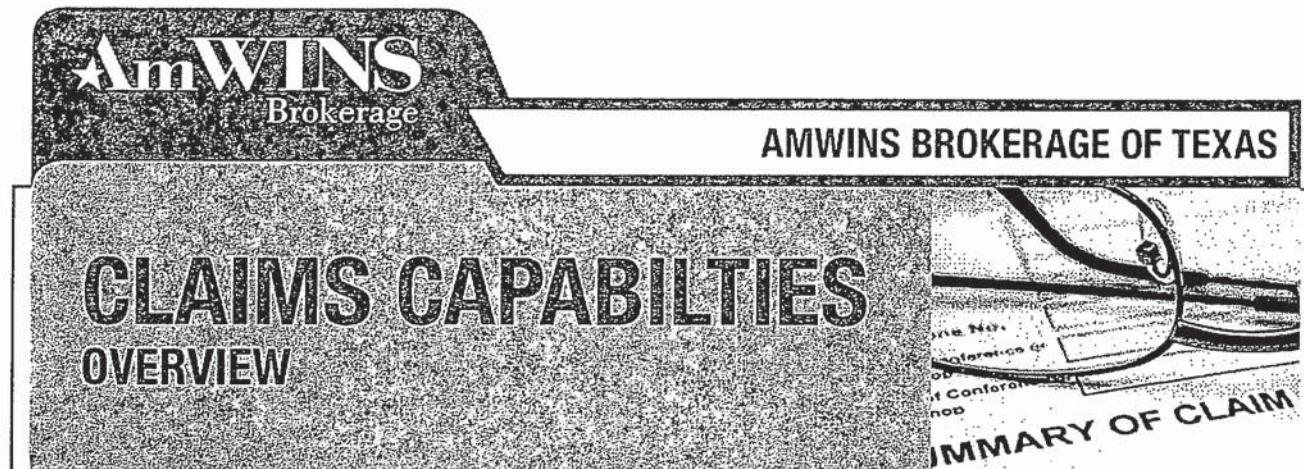
In Witness Whereof, this company has caused this policy to be signed by its President and Secretary and countersigned on the declarations page, where required, by a duly authorized agent of the company.



Frederick H. Eppinger  
President



Charles Frederick Cronin  
Secretary



**AMWINS BROKERAGE OF TEXAS**

# CLAIMS CAPABILITIES

## OVERVIEW

**CLAIMS OVERVIEW**

We strongly believe in the importance and value of effective claim services for our clients. We understand that the timely and proper handling of claims is one of the most critical "moments of truth" for our clients. AmWINS has invested heavily in claim services. From high-end claim expertise to a national claim practice that works together, we look to support our clients when they need us the most.

### CLAIMS CAPABILITIES

Our national practice provides a variety of claim services, including the following:

- **Complex Claims Advocacy** – Complex or difficult claims will often require a higher degree of attention, oversight and advocacy. This effort triggers a team approach between the retailer, AmWINS broker and claims consultant. Our intent here is to set a claims strategy early in the process to ensure the claim is properly handled, communicated and expectations set. Claims are reviewed to ensure that we advocate properly on behalf of the client.
- **Claim Consulting** – We will work closely with our clients to help in the design of a successful claims management program and the ongoing quality of service provided by insurance carriers and TPA's. Our consultants can also get involved when issues around communication, coordination or other relevant areas are somehow interfering with the outcomes of the claims.
- **TPA and IA Selection** – We will work with our clients to help with TPA (Third Party Administrator) and IA (Independent Adjuster) assignments. These selections can often be a critical component of an overall placement and risk management program.
- **Claims Administration** – When requested, we can monitor claims for our clients through a local AmWINS office.

### WORKING TOGETHER TOWARD SUCCESSFUL CLAIM OUTCOMES

The success of a claim outcome typically depends on factors such as good communication, expertise and strong working relationships. Our goal at AmWINS is to be well prepared before a claim occurs and then to be actively engaged with our retail brokers on the more difficult and complex claims. Ideally, we like to work with our clients as early as possible. Whether there is a claim that you think is getting difficult, or an overall program that needs a good claims strategy, we can be much more effective if we are brought in early.

### AMWINS BROKERAGE OF TEXAS CLAIMS TEAM

If you need assistance from AmWINS Brokerage of Texas on a particular claim or account, please direct your question to [txclaims@amwins.com](mailto:txclaims@amwins.com) or contact:

<b>Morgan Payne</b> 214.561.9339 <a href="mailto:morgan.payne@amwins.com">morgan.payne@amwins.com</a>	<b>David Bailey</b> 214.561.7039 <a href="mailto:david.bailey@amwins.com">david.bailey@amwins.com</a>
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## Exhibit B

MULLIN•HOARD•BROWN•LLP



Steven L. Hoard

*PARTNER*

Board Certified, Civil Trial Law,  
and Business Bankruptcy Law,  
Texas Board of Legal Specialization

Email: [shoard@mhba.com](mailto:shoard@mhba.com)  
Direct Dial: (806) 337-1112  
Fax: (806) 372-5086

November 9, 2016

Mr. Andy Tyzenhaus  
Senior Specialty Claim Consultant  
THE HANOVER INSURANCE GROUP  
333 W. Pierce Road, Suite 300  
Itasca, IL 60143

*Via email: [atyzenhaus@hanover.com](mailto:atyzenhaus@hanover.com)  
and U.S. First Class Mail*

Re: Hanover Policy No. LHD A256124 02  
Claim No. 15-00785997

Dear Mr. Tyzenhaus:

I represent Pat Davis, one of the insureds under the above-referenced insurance policy. I understand from both Upshaw Insurance Agency, Inc., and from John Ben Blanchard, attorney of record for Jim Austin, that you are the adjuster at the Hanover Insurance Group responsible for handling the claim made by Mr. Austin against my client. Attached to this letter is a copy of the lawsuit recently filed by Mr. Austin against Pat Davis. I have agreed to accept service of the lawsuit on behalf of Mr. Davis, but we do not currently have a formal answer date. I expect the answer will be due within the next two or three weeks.

The attached Plaintiff's Original Petition filed by Mr. Austin speaks for itself, but as you can see the claims against Mr. Davis are based on his alleged negligent hiring and supervision of a bookkeeper and his alleged breach of fiduciary duty. Mr. Davis is not accused of any intentional wrongdoing himself and indeed has not committed any intentional wrongdoing.

I understand from Upshaw and from Mr. Blanchard that you have indicated, at least informally, that you do not believe there is any coverage for the claims asserted by Mr. Austin. I hope that that informal conclusion was based on a misapprehension of the facts that form the basis of the claim and that after you have reviewed the attached petition, you will conclude otherwise.

In any event, I hereby make demand on behalf of Mr. Davis that Hanover both defend and indemnify Mr. Davis under the above-referenced policy with respect to the claims asserted by Mr. Austin in the attached lawsuit. Because we will have to file an answer to the lawsuit

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PO BOX 31656, 79120 • 500 S TAYLOR • SUITE 800, LB 213 • AMARILLO, TEXAS 79101  
PHONE 806-372-5050 • FAX 806-372-5086

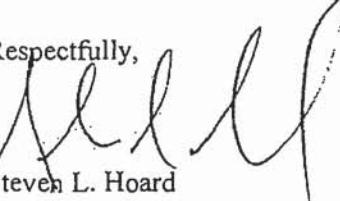
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[www.mullinhoard.com](http://www.mullinhoard.com)

Mr. Andy Tyzenhaus  
November 9, 2016  
Page 2

shortly, I ask that you get back to me with Hanover's response within five (5) business days from the date of this letter.

I look forward to hearing from you.

Respectfully,  
  
Steven L. Hoard

SLH/li  
Enclosure  
4671\001290967

CAUSE NO. 70990C

JAMES AUSTIN, III, § IN THE \_\_\_\_\_ DISTRICT COURT  
§  
Plaintiff, §  
§  
VS. § IN AND FOR  
§  
PAT DAVIS, INC., d/b/a §  
PAT DAVIS PROPERTIES, §  
§  
Defendant. § RANDALL COUNTY, TEXAS

**PLAINTIFF'S ORIGINAL PETITION**

COMES NOW Plaintiff, James Austin, III (hereinafter "Plaintiff" or "Austin"), filing this Plaintiff's Original Petition against Defendant, Pat Davis, Inc. d/b/a Pat Davis Properties (hereinafter "Defendant"), and would show the Court as follows:

**I.**  
**DISCOVERY CONTROL PLAN**

1. Plaintiff intends to conduct discovery under Level 2 of the Texas Rule of Civil Procedure 190.3 and affirmatively pleads that this suit is not governed by the expedited-actions process in Texas Rule of Civil Procedure 169 because Plaintiff seeks monetary relief over \$100,000.

**II.**  
**CLAIM FOR RELIEF**

2. Plaintiff seeks monetary relief over \$200,000 but not more than \$1,000,000, interest, and court costs.

**III.**  
**PARTIES**

3. Plaintiff, James Austin, III, is an individual who resides in Randall County, Texas.

PLAINTIFF'S ORIGINAL PETITION

Page 1 of 6

FILED  
11/1/2016 10:43:29 AM  
Jo Carter, District Clerk  
Randall County, Texas  
RH \_\_\_\_\_ Deputy

4. Defendant, Pat Davis, Inc. d/b/a Pat Davis Properties, is a Texas for-profit corporation whose principal place of business is in Randall County, Texas at 4001 S. Western, Amarillo, Texas 79109, may be served with process by serving its president, Pat Davis, at that address. No service is required at this time.

**IV.**  
**JURISDICTION AND VENUE**

5. The Court has subject-matter jurisdiction over the lawsuit because the amount in controversy exceeds the Court's minimum jurisdictional requirements.

6. Venue in Randall County, Texas is proper pursuant to Section 15.002(a)(3) of the Texas Civil Practice and Remedies Code because it is the county of the Defendant's principal office.

**V.**  
**BACKGROUND**

7. Defendant is a full service commercial real estate company specializing in property management, leasing, commercial brokerage, development, and investments.

8. Defendant represents commercial properties in Amarillo, Texas; Dallas, Texas; and Phoenix, Arizona.

9. Austin hired Defendant to manage the following properties in which Austin owned an interest: Amarillo Place One Partners, Ltd., 1301 Coulter Properties, LLC, and I-27 RA, Ltd. (hereinafter the "Properties").

10. Defendant was charged with both the collection of rents and revenues, and the payment of expenses associated with the Properties and it served as trustee in the handling of those funds. In that capacity, Defendant held Plaintiff's money in trust.

11. In connection with its management of the Properties and fiduciary responsibilities to Plaintiff, Defendant hired a third-party bookkeeper (the "Bookkeeper"). Defendant delegated many of its responsibilities to the Bookkeeper, including the receipt of rent and payment of expenses associated with the individual Properties. To facilitate the payment of expenses, Defendant provided the Bookkeeper with the Defendant's electronic signature associated with the bank accounts that held the money owned by of the properties it was managing.

12. Through the use of the electronic bank signatures, the third-party bookkeeper improperly embezzled and misappropriated funds from the bank accounts of the properties owned by Plaintiff, and managed by Defendant.

13. Defendant had no financial safeguards in place, and did not audit the accounts it oversaw in trust, to prevent the Bookkeeper's illegal activity, or to learn of such activity after it occurred.

VI.

**COUNT 1—NEGLIGENCE/NEGLIGENT HIRING AND SUPERVISION**

14. Austin incorporates by reference the allegations set forth in paragraphs 6 through 13, above.

15. Defendant, as property manager and trustee, owed a duty to properly monitor, manage, and oversee the accounting and bookkeeping for the Properties, including but not limited to, verifying collected rents, verifying paid expenses, and verifying the accuracy of the financial statements.

16. Defendant, as property manager and trustee, owed a duty to monitor, manage, and oversee those entities or individuals, including the Bookkeeper, responsible for the proper receipt of income and payment of expenses related to the Properties.

17. Defendant breached its duty to manage the Properties by failing to adequately monitor, manage, and oversee the accounting and bookkeeping for the Properties.

18. Specifically, Defendant failed to properly account for the income and expenses for the Properties; ensure the accuracy of the financial statements; monitor, manage, and oversee the Bookkeeper to whom he gave access to all the Properties' bank transactions and entrusted its electronic signature; and properly audit the financial records associated with the Properties.

19. Defendant's negligence was the proximate cause of Austin's economic losses. As a result, Austin seeks damages within the jurisdictional limits of this court.

**VII.**  
**COUNT 2—BREACH OF FIDUCIARY DUTY**

20. Austin incorporates by reference the allegations set forth in paragraphs 6 through 13 above.

21. As trustee, Defendant had a fiduciary relationship with Austin as an interest owner in the Properties. Specifically, Defendant owed Austin the following duties: a duty of loyalty and utmost good faith; duty of candor; duty to refrain from self-dealing; duty to act with integrity of the strictest kind; duty of fair, honest dealing; and a duty of full disclosure.

22. Also, as a trustee, Defendant had a duty to properly account for the income and expenses for the Properties; ensure the accuracy of the financial statements; monitor, manage, and oversee the Bookkeeper to whom he gave access to all the Properties' bank transactions and entrusted its electronic signature; properly audit the financial records associated with the Properties; properly manage, supervise, and safeguard the Properties' funds; and to invest and manage the Properties' assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the Properties.

23. Defendant breached the foregoing fiduciary duties owed to Austin as an interest owner in the Properties by failing to conduct its affairs in conformance with the duties set forth above.

24. Defendant's breach caused actual injury to Austin. As a result, Austin seeks damages within the jurisdictional limits.

**VIII.**  
**JURY DEMAND**

25. Plaintiff demands a jury trial and tenders the appropriate fee with this petition.

**IX.**  
**CONDITIONS PRECEDENT**

26. All conditions precedent to Plaintiff's claim for relief have been performed or have occurred.

**X.**  
**REQUEST FOR DISCLOSURE**

27. Under Texas Rule of Civil Procedure 194, Plaintiff requests that Defendant disclose, within 50 days of the service of this request, the information or material described in Rule 194.2.

**PRAYER**

WHEREFORE, Plaintiff asks that the Court issue a citation for Defendant to appear and answer, and that the Plaintiff be awarded judgment against the Defendant as follows:

- a. Actual damages;
- b. Prejudgment interest;
- c. Post-judgment interest;
- d. Court costs; and

e. All other relief to which plaintiff is entitled, general and special, legal or equitable.

Respectfully submitted,

/s/ John Ben Blanchard

John Ben Blanchard  
State Bar No. 02446200  
jblanchard@bf-law.com  
BROWN & FORTUNATO, P.C.  
905 S. Fillmore, Suite 400 (79101)  
P.O. Box 9418  
Amarillo, Texas 79105-9418  
(806) 345-6300 Telephone  
(806) 345-6363 Facsimile

**ATTORNEYS FOR PLAINTIFF**

F:\DOCS\5885001\PLEADING\29B3015.DOCX

Lori Ingram

---

**From:** Johnathan Hinders  
**Sent:** Wednesday, December 28, 2016 1:24 PM  
**To:** Lori Ingram  
**Subject:** Pat Davis v. Hanover Petition  
**Attachments:** Ex. B and C.wdl; 16-17 Policy.pdf

Lori,

Once we get Pat's approval, we will be filing a petition against his insurance carrier (this afternoon, I imagine). These are the Exhibits. I've already labeled B & C, but Exhibit "A"—the policy—freezes adobe every time I try to apply a header. Hopefully, it will cooperate for you.

**John Hinders**  
**Associate Attorney**  
**Mullin Hoard & Brown, LLP**  
500 S. Taylor, Suite 800  
Amarillo National Bank Plaza II  
Amarillo, Texas 79101

**806.372.5050**  
**806.372.5086 - fax**

Mailing Address:  
P. O. Box 31656  
Amarillo, TX 79120-1656

[www.mullinhoard.com](http://www.mullinhoard.com)  
[jhindlers@mhba.com](mailto:jhindlers@mhba.com)

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## Exhibit C

**LEWIS  
BRISBOIS  
BISGAARD  
& SMITH LLP**  
ATTORNEYS AT LAW  
550 West Adams Street, Suite 300  
Chicago, Illinois 60661  
Telephone: 312.345.1718  
Fax: 312.345.1778  
[www.lewisbrisbois.com](http://www.lewisbrisbois.com)

DARCY L. IBACH  
DIRECT DIAL: 312.463.3339  
DARCY.IBACH@LEWISBRISBOIS.COM

December 8, 2016

**VIA REGULAR AND CERTIFIED MAIL**

Pat Davis, Inc.  
Mr. Pat Davis  
4001 S. Western  
Amarillo, TX 79109

Re: Insured: Pat Davis, Inc.  
Insurer: Hanover Insurance Company  
Policy No.: LHD A256124 02  
Policy Period: 03/26/16 to 03/26/17  
Claim No. 15-00785997  
Suit: James Austin, III v. Pat Davis, Inc. d/b/a Pat Davis Properties,  
Cause No.: 70990C, District Court for Randall County, Texas  
Claimant: James Austin, III

Dear Mr. Davis:

Please be advised that The Hanover Insurance Company ("Hanover") has reviewed the *Austin* complaint filed against Pat Davis, Inc., d/b/a Pat Davis Properties (referred to herein as "you" and/or "Davis"), which seeks damages resulting from the embezzlement of two independent bookkeepers that you retained. The *Austin* complaint was filed by James Austin, III who alleges in the complaint that the third-party bookkeepers Davis hired "embezzled and misappropriated funds" from Austin's bank accounts of the properties owned that Pat Davis managed. Coverage for this suit is excluded under the referenced Hanover policy. Accordingly, as we explain below, Hanover must respectfully deny any defense or indemnity for the *Austin* suit.

In addition, Hanover reserves its rights to deny coverage on the basis that any wrongful act occurred before the policy's retroactive date, that an insured had prior knowledge of the claim before the policy's effective date and that the terms of the insuring agreement cannot be satisfied absent any "wrongful act" or "professional services", as those terms are defined by the policy. Hanover also reserves its rights to deny indemnity coverage for any personal profit, gain or advantage for which any insured was not legally entitled.

• **THE RABBI** "THREE WAYS OF PRAYING"  
• **THE RABBI** "THREE WAYS OF PRAYING" (CONT'D.)

ARIZONA • CALIFORNIA • COLORADO • CONNECTICUT • FLORIDA • GEORGIA • ILLINOIS • INDIANA • KANSAS • KENTUCKY • LOUISIANA • MARYLAND • MASSACHUSETTS • MISSOURI •

NEVADA • NEW JERSEY • NEW MEXICO • NEW YORK • NORTH CAROLINA • OHIO • OREGON • PENNSYLVANIA • RHODE ISLAND • TEXAS • WASHINGTON • WEST VIRGINIA

## BACKGROUND

### **The Davis Complaint**

Davis hired third-party bookkeepers, Amanda Felder and Derrick Roberts, to provide bookkeeping services for its properties. Beginning at least as early as July 2009, these bookkeepers began embezzling money from Davis and its clients. In July 2016, you filed suit in state court in Randall County, Texas against Felder and Roberts alleging that they embezzled \$1.5M to \$1.9M from client accounts, as well as from the company's account. Specifically, the defendants withdrew at least \$1,879,544.30 for their own benefit and without your knowledge or authorization. Of this amount, Felder received \$1,177,956.79 and Roberts received \$555,228.95. Georgia Street Mall, a business owned and operated by Felder and Roberts and also a defendant in your suit, is alleged to have received \$372,784.22 of the embezzled funds.

The *Davis* complaint asserts three causes of action, including Count I for violation of the Texas Theft Liability Act, which alleges that Felder and Roberts unlawfully appropriated Davis's property by removing funds from accounts and by making draws on lines of credit controlled without your knowledge and authorization. Count I alleges that the defendants intended to permanently withhold the property from Davis and, therefore, was made with the intent to deprive you of the property. Count 2 of the complaint for seeks equitable relief for "money had and received" to which the defendants were not entitled. Count 3 asserts a claim for fraud. The relief sought includes attorney fees, compensatory damages of \$1,879,544.30, statutory damages of up to \$1,000 from the defendant, equitable damages, exemplary damages, pre-judgment interest and post-judgment interest. In addition, the complaint seeks a temporary restraining order without notice to the defendants and, upon hearing, a preliminary injunction.

### **The Austin Complaint**

On November 11, 2016, James Austin, III filed a two-count complaint, against Davis, which also is pending in state court in Randall County, Texas. The complaint alleges that Austin hired Davis to manage three properties in which he owned an interest. Davis's duties included collecting rents and revenues and paying expenses associated with the properties. The complaint alleges that the third-party bookkeepers Davis hired "embezzled and misappropriated funds" from Austin's bank accounts for properties that Davis managed.

Count 1 of the *Austin* complaint alleges negligence against Davis for negligently hiring and supervising the third-party bookkeeper. It alleges that Davis breached its duties owed to Austin by, among other things, failing to manage the accounting and bookkeeping, which was the proximate cause of Austin's economic losses. Count 2 seeks alleges breach of Davis's fiduciary duties owed to Austin, including the duties of good faith, candor and refraining from self-dealing. Austin asserts a breach of the duty to safeguard funds. Austin seeks relief of actual

damages, prejudgment interest, post-judgment interest and costs. We understand that Steve Hoard is representing Davis in both actions.

### THE HANOVER POLICY

You should read your policy in full, but, for the ease of referenced, the following provisions, terms and exclusions are relevant to this claim:

**Please read this policy carefully.**

Throughout this **policy**, the terms **we**, **us** and **our** refer to the **Company** providing this insurance. The terms **you** and **your** refer to the persons and entities insured under this **policy**. Other terms in bold print have special meaning and are defined in the **policy**.

#### A. COVERAGE – WHAT THIS POLICY INSURES

##### 1. Professional Services Coverage

We will pay on **your** behalf those sums which **you** become legally obligated to pay as **damages** and **claim expenses** because of any **claim** made against **you** arising from a **wrongful act** in the rendering or failure to render **professional services** by **you**.

The following additional requirements and limitations shall apply to coverage provided under A.1 above and A.3. and A.4. below:

- a. The **wrongful act** must have first occurred on or after the applicable **retroactive date(s)**;
- b. **You** had no knowledge of facts which could have reasonably caused **you** to foresee a **claim**, or any knowledge of the **claim**, prior to the effective date of this **policy**; and,
- c. The **claim** must first be made and reported to **us** in writing during the **policy period** or any **extended reporting period**, if applicable, and must arise from any **wrongful act** to which this **policy** applies.

\*\*\*

#### B. DEFENSE AND SETTLEMENT (INCLUDED IN THE LIMIT OF LIABILITY)

We have the right to investigate and the exclusive right to defend any **claim** made under this **policy**, even if the allegations are groundless, false or fraudulent until there is a final adjudication against **you**. We are not obligated to defend any criminal investigation, criminal proceeding or prosecution against **you**. If a **claim** is not covered under this **policy**, we will have no duty to defend it.

\*\*\*

**D. DEFINITIONS**

\*\*\*

**Claim** means a written demand or suit you receive.

\*\*\*

**Damages** means monetary judgments, awards or settlements unless otherwise excluded. Damages includes (i) pre-judgment interest; and (ii) post judgment interest that accrues after entry of judgment and before we have paid, offered to pay or deposited in court that part of judgment within the applicable limit of liability.

\*\*\*

**Equitable relief** means a remedy not involving the payment of monetary damages.

\*\*\*

**Insured** means:

1. The **named insured**; and:

\*\*\*\*

10. An independent contractor for **claims and damages under Section A.1, 3, or 4**, but only while acting on your behalf and only if there is a signed agreement executed by the **named insured** and the independent contractor which:

- a) Specifies the services to be performed by the independent contractor on the **named insured**'s behalf;
- b) Provides that the services performed by the independent contractor will be under the **named insured**'s supervision;
- c) States that the independent contractor will be indemnified by the **named insured** for the services performed on the **named insured**'s behalf; and,
- d) Is entered into before the **wrongful act** which leads to a **claim** or **potential claim**.

\*\*\*

**Loss** means **claim expenses, damages and defense expenses** and does not include **equitable relief**.

**Potential claim** means any **wrongful act** or any facts or other circumstances which may subsequently give rise to a **claim**.

<sup>1</sup> **Professional services** means those services described in Item 6. of the Declarations page which you perform for others including advice given or services

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<sup>1</sup> As amended by the Real Estate Professional Services Endorsement.

performed by an **insured** for others as a **real estate agent**, but solely when such services are performed on behalf of an **insured** as a **real estate agency**, and provided that the **insured** is appropriately licensed by the state in which the insured is doing business.

**Item 6. PROFESSIONAL SERVICES**

Property Manager, Leasing Agent and/or Real Estate Agent/Broker

\*\*\*

**Retroactive date(s)** refer to the dates shown in Item 5. of the Declarations. If no date is shown on the Declarations page the retroactive date will be inception date of the policy.

**Wrongful act** and **wrongful acts** means any actual or alleged negligent act, error, omission, or misstatement committed in **your professional services**.

\*\*\*

**E. EXCLUSIONS - WHAT THIS POLICY DOES NOT INSURE**

This **policy** does not apply to **claim(s)**:

1. Cased [Based] upon, arising out of, or in any way relating directly or indirectly to **any insured**:
  - a) Committing any intentional, dishonest or fraudulent act or omission; or
  - b) Gaining any profit, remuneration or advantage to which such **insured** was not legally entitled, provided that this exclusion will not apply until a final adjudication establishes a) or b) above;
2. For any willful or criminal violation of any statute, rule or law;
3. For the return, restitution or reduction of professional fees or arising from any demand for **equitable relief**;

\*\*\*

11. Arising out of false advertising, misrepresentation in advertising, antitrust, unfair competition, restraint of trade, unfair or deceptive business practices, including but not limited to, violations of any local, state or federal consumer protection laws;

\*\*\*

17. Arising out of or resulting, directly or indirectly, from any actual or alleged commingling, misappropriation or improper use of funds or monies;

## COVERAGE RESERVATION AND DENIAL

As quoted, the Hanover policy's insuring agreement limits coverage to claims for "wrongful acts" that must have first occurred on or after the policy's applicable retroactive date, which, here, is March 26, 2009. (Policy A.1.a.). The *Davis* complaint alleges that Felder and Roberts began embezzling "at least as early as July 2009". The *Austin* complaint asserts wrongful acts by Davis with regard to the hiring and supervision of the bookkeepers who are alleged to have committed the embezzlement. If it is determined that any wrongful act first occurred before the policy's retroactive date, Hanover reserves its rights to deny coverage on this basis.

In addition, the policy limits coverage to claims that "you had no knowledge of facts which could have reasonably caused you to foresee a claim, or any knowledge of the claim, prior to the effective date of this policy." (Policy A.1.b). The policy defines "you" as those "persons and entities insured under the policy, and the definition of "insured" encompasses independent contractors which meet the qualifications set forth in the definition. By their very embezzlement, Felder and Roberts were aware of facts that could formulate a claim prior to the effective date of the policy. You allege that this misconduct had been occurring since July 2009. The insured hired and supervised these bookkeepers since on or before July 2009, and thus, Hanover reserves its rights to deny coverage if it is determined that an insured knew of the claim or potential claim before the effective date of the policy based upon both the policy language and common law. Please provide any written contract or papers entered into between Davis and Felder/Roberts regarding the scope of their bookkeeping services and advise of the nature of this business relationship.

As quoted, the Hanover policy's insuring agreement provides, in pertinent part, that it will pay sums that the insured becomes "legally obligated to pay as damages and claim expenses because of any claim made against you arising from a wrongful act in the rendering or failure to render professional services by you." Hanover reserves its rights to deny coverage if it is determined that the complained of conduct did not arise from a "wrongful act" or in the course of rendering or failing to render "professional services", as those terms are defined under the policy. Moreover, Hanover reserves its rights to deny coverage in that any damages sought are precluded by the economic loss doctrine and/or do not fall within the policy's definitions of "damages" or "loss".

Exclusion 1 to Hanover's policy precludes indemnity coverage for "the gaining by any insured of any personal profit, gain, or advantage to which any insured was not legally entitled". If it is determined that an insured personally received a profit, gain or advantage that it was not legally entitled as a result of the conduct complained of, Hanover reserves its rights to deny indemnity coverage based upon Exclusion 1.

Notwithstanding these reservations and subject thereto, Hanover must deny coverage for the *Austin* suit, including any defense, under Exclusion 17 contained in the policy. Exclusion 17 bars coverage for claims "arising out of or resulting, directly or indirectly from any actual or alleged commingling, misappropriation or improper use of funds or monies". This exclusion operates to

7 | Page

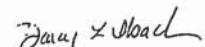
preclude coverage for this claim. The subject complaint asserts that funds were “embezzled and misappropriated” from the Austin accounts and that the insured failed to safeguard the Properties’ funds. (*Austin* Complaint, para. 12, 22). As Exclusion 17 does not limit its applicability by who is alleged to have been or actually was commingling, misappropriating or improperly using funds or monies, it is enforceable here and excludes coverage for the *Austin* suit. Notably, but for the embezzlement claim, there would be no claim for negligent hiring and supervision and/or breach of the fiduciary duties.

The foregoing evaluation as to coverage is based upon, and is necessarily limited to, the materials currently in Hanover’s possession. If you have any information which may impact this determination, please forward it to my attention at your earliest convenience. Hanover continues to reserve the right to raise other policy terms and conditions as defenses to coverage, which may be warranted in light of additional information received by Hanover. Hanover does not waive any rights it has or may have under the policy, at law or in equity, including those rights under terms of the policy not referenced in this letter. Nothing contained in or omitted from this letter should be construed as a waiver of any rights Hanover has or may have under the policy, at law or in equity.

As we previously advised, and if not already completed, we recommend that you immediately tender this matter to any other available insurance carriers for a determination of coverage.

Please contact me should you have any questions.

Very truly yours,



Darcy L. Ibach

Cc: Steven L. Hoard, Esq.

Andrew Tyzenhaus  
Senior Specialty Claim Consultant

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Location : All Courts [Help](#)

## REGISTER OF ACTIONS

### CASE NO. 71259C

PAT DAVIS, INC. vs. HANOVER INSURANCE GROUP

§  
§  
§  
§  
§

Case Type: Civil Case - Other  
Date Filed: 12/28/2016  
Location: 251st District Court

#### PARTY INFORMATION

Defendant HANOVER INSURANCE GROUP

#### Attorneys

Plaintiff PAT DAVIS, INC.

STEVEN L. HOARD  
Retained  
806-372-5050(W)

AMARILLO, TX 79109

JONATHAN HUDSON  
HINDERS  
Retained  
806-337-1119(W)

#### EVENTS & ORDERS OF THE COURT

OTHER EVENTS AND HEARINGS	
12/28/2016	<b>Original Petition (OCA)</b> <i>for Declaratory Judgment, Equitable Relief &amp; Damages</i>
12/28/2016	<b>CIVIL SCHEDULE REVIEW-18 Months</b>
01/13/2017	<b>REQUEST</b> <b>FOR ISSUANCE</b>
01/16/2017	<b>Citation Issued</b> <i>TO HANOVER INS. GROUP BY SERVING REGISTERED AGENT, CT CORP SYSTEM-CMS</i>
01/18/2017	<b>CERTIFIED MAIL RECEIPT (from Post Office)</b> <i>CT CORP SYSTEM (HANOVER INS. GROUP</i>
01/23/2017	<b>Citation Served</b> <i>HANOVER INS. GROUP BY SERVING CT CORP SYSTEM-GREEN CARD</i>

#### FINANCIAL INFORMATION

<b>Plaintiff PAT DAVIS, INC.</b>		
Total Financial Assessment		432.01
Total Payments and Credits		432.01
<b>Balance Due as of 01/27/2017</b>		<b>0.01</b>
12/29/2016	Transaction Assessment	294.01
12/29/2016	E-File Electronic Payment Receipt # 2016-239737	Pat Davis, Inc. (294.00
12/29/2016	Transaction Assessment	2.01
12/29/2016	E-File Electronic Payment Receipt # 2016-239746	Pat Davis, Inc. (2.00
01/13/2017	Transaction Assessment	136.01
01/13/2017	E-File Electronic Payment Receipt # 2017-240555	Pat Davis, Inc. (136.00